

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

CLINTON E. WORDEN & CO. (A COR-
PORATION), J. A. BRIGHT, T. F.
BACON, C. J. SCHMELZ AND
LUCIUS LITTLE,

Appellants,

vs.

CALIFORNIA FIG SYRUP COMPANY
(A CORPORATION),

Appellee.

VOL. II.

(Pages 321 to 634 inclusive.)

Appeal from the United States Circuit Court, Ninth
Judicial Circuit, in and for the Northern
District of California.

FILED

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X. Q. 44. You stated what this fig juice was used for. Did you ever see it used?

A. I have never seen it used for those purposes; no, sir.

X. Q. 45. Then you don't know, of your own knowledge, what was done with it?

A. No, sir; I know it is sold; that is all I know; and it was taken out of stock.

X. Q. 46. Did you, in answer to a question asked you by Mr. Miller, state that it was used for certain purposes, but you didn't see it used?

A. Yes. It was sold with the other fruit juices. I can't say with regard to all the others.

X. Q. 47. We only want to have your own knowledge, not what you suppose.

A. It was sold as fruit juice.

X. Q. 48. But what the purchaser did with it, you don't know? A. No, sir.

X. Q. 49. You say it was put up in quart champagne bottles? A. Yes, sir.

X. Q. 50. You didn't follow it any further?

A. No, sir.

X. Q. 51. You say it was put up in quart champagne bottles? A. Yes, sir.

X. Q. 52. Now, your record must show how many bottles were manufactured? A. Not necessarily so.

X. Q. 53. What is your habit in regard to that?

A. Each year, and at the end of the year, the records are destroyed, as they are not permanent records. They were simply as a guide from one season to another.

X. Q. 54. But did you manufacture this fig juice and put it into these quart bottles? A. Yes, sir.

X. Q. 55. And there was a record made of the amount that was manufactured?

A. I think there was; I am not positive.

X. Q. 56. And you think there was a record made of the sale, or, rather, of the amount sold?

A. A record of the number, but not of all.

X. Q. 57. Where was this fig juice sold?

A. I can't state.

X. Q. 58. All over the United States?

A. I suppose so.

X. Q. 59. You suppose so?

A. In the general course of business.

X. Q. 60. You don't know? A. No, sir.

X. Q. 61. Have you anything to do with the selling, at all? A. No.

X. Q. 62. Then how do you know about this?

A. I know the orders come into the laboratory and the goods go out.

X. Q. 63. They are put up and sent downstairs?

A. Yes.

X. Q. 64. That is all that you know about it?

A. That is all that I know about it.

X. Q. 65. You don't see the buyers? A. No, sir.

X. Q. 66. You don't see the goods shipped?

A. Sometimes.

X. Q. 67. You do see the goods shipped?

A. Yes.

X. Q. 68. You don't see the buyer, and you don't have anything further to do with it?

A. I know that the goods are shipped.

X. Q. 69. In some instances, you have seen them shipped? A. Yes, sir.

X. Q. 70. You stated that this was used in making fig syrup and soda water. Did you ever see it used for that purpose? A. No, sir.

X. Q. 71. Then, that is simply your understanding of the way to which it is put? A. Yes, sir.

X. Q. 72. You also made a statement that this was used in the manufacture of a laxative medicine known as "Fig Syrup," did you not? A. Yes, sir.

X. Q. 73. This juice? How long have you been doing that?

A. Well, I didn't state that we used this fig syrup in the manufacture of fruit juice.

X. Q. 74. I misunderstood you, then. You didn't say that you used this in the manufacture of the laxative medicine which you call fig syrup? A. No, sir.

X. Q. 75. Put up by Clinton E. Worden & Co.?

A. No, sir; I did not.

X. Q. 76. You did state, though, that you had fig juice in that medicine, didn't you? A. Yes, sir.

X. Q. 77. Will you state again the quantities of fig juice that you used?

A. I use it in the form of figs chopped up.

X. Q. 78. You use it in the form of figs chopped up?

A. Yes, sir.

X. Q. 79. What is the proportion that you use?

A. I can't say. I can't state without my record.

X. Q. 80. You say that it does not add to the laxative quality of the medicine?

A. I state that I don't know of my own knowledge whether it does or not.

X. Q. 81. You did not say that it did not?

A. No, sir; I did not.

X. Q. 82. You don't know, of your own knowledge?

A. No, sir.

X. Q. 83. If it does not add to the laxative quality of the medicine, what do you put it in there for?

A. I don't know whether it does or not.

X. Q. 84. But you answer my question. Assuming that it does not add to the laxative quality of the medicine, what do you put it in the medicine for?

A. As I said, I don't know whether it does or not.

X. Q. 85. That is not the question. (Cross Question 84 read.)

A. Because I was told to.

X. Q. 86. Who told you? A. My employer.

X. Q. 87. Which one of your employers?

A. Mr. Clinton E. Worden.

X. Q. 88. Personally? A. Yes, sir.

X. Q. 89. Did he give you a formula for making it?

A. No, sir.

X. Q. 90. Did you manufacture the medicine yourself?

A. Yes, sir.

X. Q. 91. This laxative medicine? A. Yes, sir.

X. Q. 92. He didn't give you a formula for making it?

A. No, sir.

X. Q. 93. Did he tell you how to make it?

A. He mentioned in a general way; yes, sir.

X. Q. 94. And did you get any further instructions as to how to make it? A. I consulted with him; yes.

X. Q. 95. You consulted with him as to how to make it? Did you have any instructions as to what color to make it? A. No, sir; not particularly.

X. Q. 96. Not particularly. Did you have any instructions?

A. We were not particular about that. It was not colored at all.

X. Q. 98. It was not colored at all? A. No, sir.

X. Q. 99. Do you mean to say that the medicine put up by you is colorless? A. No, sir.

X. Q. 100. Well, what is the color of it?

A. The color is owing to the ingredients used.

X. Q. 101. The color is owing to the ingredients used? What is that color? A. It is brownish.

X. Q. 102. Now, what ingredients do you use in the preparation that gives it its color? [*No answer.*]

X. Q. 103. Is there no other ingredient that gives it a color? A. No, sir.

X. Q. 104. That is the only ingredient in your composition that gives it this brown color?

A. With the sole effect that figs may have on it.

X. Q. 105. Do you use any other ingredient except senna and figs? A. Yes, sir.

X. Q. 106. What other ingredients do you use?

A. Essential oils.

X. Q. 107. More than one kind? A. Yes, sir.

X. Q. 108. How many kinds?

A. I think there are four.

X. Q. 109. Four kinds of essential oils? What is the purpose of those essential oils? A. For flavoring.

X. Q. 110. To give it a flavor? A. Yes, sir.

X. Q. 111. What other purposes?

A. To counteract any griping.

X. Q. 112. Will you state what those essential oils are?

A. Peppermint and—well, I would rather have time to look it up—not to state positively, because I might make a mistake. Peppermint is one.

X. Q. 113. Was all this medicine that was manufactured by Clinton E. Worden & Co. manufactured under your superintendence? A. Yes, sir.

X. Q. 114. Was there anybody besides yourself and Clinton E. Worden that knew the ingredients or knew the contents of the medicine? A. Yes, sir.

X. Q. 115. Who was it?

A. The man who did the work.

X. Q. 116. The man who did the work? Who gave him instructions, as to the way that it should be prepared? A. I did.

X. Q. 117. Then you told him how much to put in of each kind? A. Yes, sir.

X. Q. 118. You put in senna and this fig juice and four essential oils? A. Chopped figs.

X. Q. 119. You didn't put in the fig juice? I beg your pardon again. You put in chopped figs and four essential oils? A. I think it is four essential oils.

X. Q. 120. You don't remember the proportions?

A. No, sir.

X. Q. 121. They were never written out for you?

A. Yes, sir.

X. Q. 122. Eh?

A. Yes, sir; they were written out.

X. Q. 123. Do you have them in the factory?

A. Yes, sir.

X. Q. 124. You have seen the medicine put up by the California Fig Syrup Company, called "Fig Syrup," haven't you?

A. Yes, sir.

X. Q. 125. Where did you see it?

A. In the laboratory.

X. Q. 126. In your laboratory? A. Yes.

X. Q. 127. How much did you have there?

A. I could not state as to that.

X. Q. 128. When was it that you had it in your laboratory?

A. Well, I think here has been a bottle there for two or three years.

X. Q. 129. Well, has there not been more than one bottle? A. Yes, sir.

X. Q. 130. How many bottles?

A. I could not state.

X. Q. 131. Now, do you remember how much was brought here originally? A. No, sir.

X. Q. 132. Was it a dozen bottles?

A. No, it was less.

X. Q. 133. Half a dozen bottles?

A. I think, I could not state; it was less than a dozen, I know that.

X. Q. 134. Now what did you do with that medicine?

A. That was brought to the laboratory.

X. Q. 135. You examined it? A. Yes, sir.

X. Q. 136. What else did you do with?

A. I could not state exactly what was done with it.

X. Q. 137. You could not state? What is the reason you can't?

A. Well, I gave it to a gentleman to examine it.

X. Q. 138. What?

A. I gave it to a chemist to examine.

X. Q. 139. How much did you give him to examine?

A. I gave him the original package.

X. Q. 140. You gave him all the original packages?

A. Well, at different times. I can't remember back. It extends over a good many years.

X. Q. 141. You gave him the original packages to examine?

A. I have given him an original package, but how many or at what times I can't state.

X. Q. 142. Did he analyze it?

A. I believe he did.

X. Q. 143. And he reported to you, did he not?

A. Yes, sir.

X. Q. 144. Do you remember what he reported to have found as the ingredients of the composition?

A. Well, he stated that the basis, I believe, of the laxative part was senna.

X. Q. 145. Anything else?

A. He gave the density of the syrup and the amount of alcohol it contained.

X. Q. 146. Now do you use any alcohol in yours?

A. Yes, sir.

X. Q. 147. Did he state that there was any peppermint in it? A. Yes, sir.

X. Q. 148. Did he state that there were any essential oils? A. Yes, sir.

X. Q. 149. Were they the same that you put in your medicine? A. I don't know.

X. Q. 150. You don't know?

A. I don't remember.

X. Q. 151. You have given that statement somewhere, haven't you? A. I don't know.

X. Q. 152. You don't know. Did you ever have more than one examination made by that chemist, or one analysis? A. Yes, sir; I think we did.

X. Q. 153. How long apart?

A. I could not state as to that.

X. Q. 154. Six months?

A. Possibly more. I don't know. I could not state.

X. Q. 155. Was the first analysis that he made before you commenced to manufacture the medicine?

A. I could not state as to that. I don't know.

X. Q. 156. You don't remember? Well, now, is there any way in which you can fix the time that you gave him this bottle to analyze? A. No, sir.

X. Q. 157. Now, how long did you say it was that you gave it to him again for analysis?

A. I didn't state any time. I don't know how long ago.

X. Q. 158. How is that?

A. I don't know how long ago it was.

X. Q. 159. Now, have you ever given him a bottle since then to analyze?

A. Well, I know he has had several, but I don't know how many.

X. Q. 160. You know he has had several from time to time? A. Yes, sir.

X. Q. 161. Now, what did you want him to analyze those bottles for?

A. Well, because we were requested to discover, if we could, what it was made of.

X. Q. 162. Did you do that in order to manufacture a medicine as nearly like it as you could?

A. Well, the reason it was done was because there was a query as to what the principle was.

X. Q. 163. That is not answering my question. Was not the purpose with which you gave this to him to analyze, to enable you to manufacture a medicine like it?

A. Originally? No, sir.

X. Q. 164. Was it at any time?

A. I can't state as to that, as I don't remember.

X. Q. 165. What was the original purpose then that you gave it to him for analysis?

A. Curiosity, to find what was in it.

X. Q. 166. Curiosity? That was all, was it? Just simply curiosity?

A. That is the reason I gave him the sample to analyze.

X. Q. 167. Now, when you gave him again for analysis, what was your object?

A. I think one of our travelers brought it in and asked to know what was in it.

X. Q. 168. Was that the only reason?

A. That was the only reason that I had; yes, sir.

X. Q. 169. That was the only reason you had when you gave it to him again? What was that reason?

A. I don't remember of giving him but two samples.

X. Q. 170. You don't remember of giving him but two samples? A. Yes, sir.

X. Q. 171. You said a little while ago that you have done it several times.

A. I remember those two now.

X. Q. 172. Did your chemist write out what the ingredients were? A. Not to my knowledge, no, sir.

X. Q. 171. But he did tell you what those ingredients were? A. Yes, sir.

X. Q. 174. And the medicine that you afterward manufactured and called the "Syrup of Figs" was substantially the same ingredients, was it not?

A. Yes, sir. I had been manufacturing it previous to that.

X. Q. 175. You had been manufacturing it previous to that? A. Yes, this laxative.

X. Q. 176. Do you always use the same ingredients in the manufacture of fig syrup? A. Yes, sir.

X. Q. 177. You always had?

A. Yes, always; approximately the same.

X. Q. 178. Now, you state that you have got the formula for this medicine? A. Yes, sir.

X. Q. 179. You state that you cannot remember all the four essential oils? A. No, sir.

X. Q. 180. Is there any other ingredient besides senna, fig juice or chopped figs and these four essential oils?

A. And alcohol.

X. Q. 181. Anything else?

A. That is all I can remember at this time.

X. Q. 182. Did you put in any henbane in it?

A. Yes, I had forgotten that; a small amount; a very small amount.

X. Q. 183. Now, there is something else that you have remembered. Is henbane an essential oil?

A. No, sir.

X. Q. 184. What is the reason you didn't tell me when I asked you before, that you had henbane in it?

A. I didn't think of it.

X. Q. 185. Don't you know that henbane is a poison?

A. Yes, sir.

X. Q. 186. Isn't that the reason that you didn't tell me in answer to my question, that you put henbane in it?

A. No, sir.

X. Q. 187. Can you remember, now, these four essential oils?

A. No, sir.

X. Q. 188. Can you remember any other ingredients that you put in it? A. No, sir.

X. Q. 189. Do you put any sugar in it?

A. Yes, sir.

X. Q. 190. Then there is something else?

A. I don't remember whether that was mentioned or not.

X. Q. 191. No, it was not. You put in sugar. Now, was that all you put in? You put in senna and chopped figs and sugar and henbane and peppermint. Now, is there any thing else?

A. Well, there are two or three oils that I don't wish to mention until I am more sure about them.

X. Q. 192. Will you post yourself in regard to that so as to answer my question tomorrow? A. Yes, sir.

Mr. MILLER.—We will give you the formula. We are not ashamed of ours as you are of yours. We are perfectly willing to make ours public. We have our chemist right here to give you the formula, everything that is in it. There is nothing secret about it at all and never has been.

(By Mr. OLNEY.)

X. Q. 193. Now, I understand you to say that all this medicine has been manufactured under your superintendency? A. Yes, sir.

X. Q. 194. Have you always used fig juice in the manufacture of that medicine, or chopped figs?

A. No, sir.

X. Q. 195. When did you use this chopped figs first?

A. I can't state.

X. Q. 196. For how long did you use it?

A. Well, it is a good many years ago.

X. Q. 197. Were chopped figs used in your medicine at the time this injunction was served?

A. I can't state as to that. I think we were using it previously, but I can't state as I have no records of the dates.

X. Q. 198. Who is the man who does the actual work or manual labor of mixing this medicine?

A. Well, the man who used to do it in years gone by was Mr. Ryan—P. A. Ryan.

X. Q. 199. As I understand you, you bought a package of the medicine put up by the California Fig Syrup Co.? A. I can't say as to that. I didn't buy it.

X. Q. 200. You didn't buy it? A. No, sir.

X. Q. 201. You don't know whether the purchase was made by the concern for which you worked or not?

A. No, sir.

X. Q. 202. It was brought into the laboratory?

A. It was brought into the laboratory.

X. Q. 203. And you think it was something less than a dozen bottles? A. Yes, sir.

X. Q. 204. Now, have you any record there to fix the time when that was done? A. No, sir.

X. Q. 205. Do you know how long ago it was?

A. No, sir.

X. Q. 206. Two years ago?

A. I think it was longer.

X. Q. 207. Do you think it was longer than three years ago? A. I could not state.

X. Q. 208. How soon after you got this package was it that you had this analysis made by your chemist?

A. I think it was made at once.

X. Q. 209. Made at once? But the time you can't fix?

A. No, sir.

X. Q. 210. Now, that is all, Mr. Morrison, until you produce those records.

Redirect Examination.

(By Mr. MILLER.)

R. Q. 1. Mr. Morrison, state about how many different medicines or preparations the firm of Clinton E. Worden & Co. manufacture, if you can?

A. I can't state positively; there are so many.

R. Q. 2. Are there a great many?

A. There are a great many.

R. Q. 3. Do they run up into the thousands?

A. Well, I think, taking everything, they do; extracts and tablets and everything, I think they do; yes, sir; I know they do run up over a thousand.

Recross Examination.

(By Mr. OLNEY.)

X. Q. 1. Do you manufacture any medicines except this laxative fig syrup that you have been talking about?

A. Yes, sir.

X. Q. 2. How many different kinds of medicine do they manufacture?

A. Well, I can't state. You will have to modify that question a little to enable me to answer it.

X. Q. 3. Well, now, perhaps you can suggest to me a way in which I can modify that question so that you can answer it.

(X. Q. 2 read.)

A. First, I would like to know what you class as these medicines—whether you mean preparations used for medicinal purposes strictly, or—

X. Q. 4. (Interrupting.) Yes, sir; certainly.

A. Well, a great many of them?

X. Q. 5. A great many of them? How many?

A. I could not state.

X. Q. 6. A thousand?

A. I think there are more than a thousand.

X. Q. 7. That you manufacture? A. Yes, sir.

X. Q. 8. Do you manufacture any proprietary medicine except laxative, this fig syrup?

A. Yes, sir; I don't know whether you would call it proprietary or not.

X. Q. 9. Do you manufacture any medicines besides this that is upon the market, and commonly known as proprietary medicines?

A. Well, they are termed nonsecret medicines.

X. Q. 10. They are termed nonsecret medicines? What names do you give to those medicines that you manufacture?

A. The names usually apply to the ingredients.

X. Q. 11. To the ingredients. But you take the name of some medicine that is well known on the market, do you not, and use that name, and then on the bottle you give the ingredients? Is that the custom?

A. No, sir; not to the best of my belief; that is not the custom.

X. Q. 12. Don't you know? A. No, sir.

X. Q. 13. That is not a question of belief. Don't you know? A. I can't say that I do know.

X. Q. 14. What medicines do you manufacture?

A. Well, syrup of tar and wild cherry.

X. Q. 15. Some other names?

A. Compound syrup of sarsaparilla.

X. Q. 16. Some other names.

A. White pine balsam.

X. Q. 17. Now, do you manufacture any medicine that is known on the market as a proprietary medicine?

A. I am not positive as to that, as I don't know. I think some of our medicines have copyrighted names.

X. Q. 18. Are they copyrighted for the benefit of your concern? A. I suppose so, sir.

X. Q. 19. You don't know whether they are imitations or not?

A. To the best of my belief they are not.

X. Q. 20. Does your concern manufacture any medicines that are imitations of medicines manufactured by other people? A. Not that I know of.

X. Q. 21. Does your concern not manufacture medicines and give them the same name that other medicines are given or that other parties apply to medicines of their manufacture? A. Not that I know of.

X. Q. 22. Not that you know of? A. No, sir.

X. Q. 23. Well, you know all in this case, don't you?

A. Well, I can't say that I do. I had nothing to do with the naming of it.

X. Q. 24. I am not talking about that. Your concern manufactures a medicine called syrup fig, and the California Fig Syrup manufacture the medicine which it calls "Fig Syrup." A. Yes, sir.

X. Q. 25. Now, is there an instance in the business of your house where you have manufactured a medicine and put it on the market when at the same time some other firm or other concern was putting a medicine of the same name on the market?

Mr. MILLER.—Will you please tell me, Mr. Olney, what that has to do with this case as a material question?

Mr. OLNEY.—I don't know that I am under any obligation to explain to you.

Mr. MILLER.—You certainly, as a lawyer, know that that is an improper question to ask. I have not objected

to any of these questions because I don't like to make objections to questions. But you certainly must know that it is improper question to put to the witness.

Mr. OLNEY.—I know that it is a perfectly proper question, Mr. Miller.

(X. Q. 25 read.)

Mr. MILLER.—The question is objected to as incompetent, irrelevant and immaterial, because this suit is based on the alleged sales of a medicine called "Syrup of Figs," and not of some other medicine that is not involved in this case at all, and, therefore, if they were manufacturing a thousand other medicines under the circumstances detailed in the question, it would be immaterial to this case; because no suit has been brought on them, and the complainant does not claim all the medicines in the world.

(By Mr. OLNEY.)

X. Q. 26. Will you answer the question?

A. I don't know of my own knowledge; no, sir.

X. Q. 27. Now, will you let me see your catalogue?

(The witnesses produces.)

Mr. OLNEY.—This cross-examination is continued until the record is produced by the witness.

Examination in chief of

AUGUST CHAS. ZEIG, a witness called on behalf of respondents; sworn.

(By the EXAMINER.)

Q. 1. What is your full name?

A. August Charles Zeig.

Q. 2. What is your age, residence and occupation?

A. I am thirty years of age; by occupation I am a chemist.

Q. 3. Where do you reside? A. San Francisco.

(By Mr. MILLER.)

Q. 4. Where did you study chemistry?

A. At the University of Michigan, Ann Arbor.

Q. 5. How much experience have you had since leaving college in the matter of chemistry?

A. About nine years.

Q. 6. At what place? A. With Worden & Co.

Q. 7. You are now employed by Clinton E. Worden & Co., are you? A. Yes, sir.

Q. 8. How long have you been employed by them?

A. I think eight or nine years.

Q. 9. What is the general nature of your duties there?

A. As chemist, analytical chemist, making analysis.

Q. 10. An analytical chemist, eh? A. Yes, sir.

Q. 11. They have manufactured a medicine there in the past known as "Syrup of Figs," I believe. Will you please state what are the constituents of that medicine as manufactured by Clinton E. Worden & Co.?

A. The constituents of the preparation known as "Syrup of Figs" are figs and senna, with aromatic oils.

Q. 12. What proportion of figs do they put in it?

A. I don't remember the proportion.

Q. 13. But you know figs enter into it?

A. Yes, sir.

Q. 14. In what shape are they put into it?

A. They are put in as chopped figs.

Q. 15. Dried figs chopped up, are they?

A. Yes, commercial dried figs, chopped up.

Q. 16. Then, what did you do with them?

A. They were treated with water and extracted.

Q. 17. That is, the figs are chopped up, put in water, and then expressed or extracted?

A. Yes, sir; and the extract put into the syrup.

Q. 18. Now, what is the main ingredient of the medicine, the laxative ingredient? A. I think senna.

Q. 19. Now, what other substances were put into the medicine besides the senna and the figs?

A. Some aromatic oils.

Q. 20. Please name the oils that were put in.

A. As close as I remember, it is oil of peppermint and oil of cloves, and perhaps some oil of cassia.

Q. 21. Then you have senna, fig juice and oil of peppermint and oil of cloves and cassia?

A. Yes, I think those are the ingredients. I am not positive.

Q. 22. You add water to it, I presume, or simple syrup, I presume?

A. Yes, sir; there is some water added to it.

Q. 23. With sugar? A. Sugar.

Q. 24. You have not with you the data to show exactly what the constituents were, have you? A. No, sir.

Q. 25. Have you that data at home or at the factory?

A. At the factory.

Mr. MILLER.—Then we will continue the examination of this witness until he can produce it to-morrow. I will ask you to produce it tomorrow.

Further hearing adjourned to Tuesday, December 20, 1898, at 10 A. M.

Tuesday, December 20, 1898, 10 a. m.

Counsel appearing:

For complainant, Warren Olney, Esq.

For respondents, John H. Miller, Esq., and Purcell
Rowe, Esq.

Examination in chief of

AUGUST CHARLES ZEIG (resumed).

(By Mr. MILLER.)

Q. 26. Mr. Zeig, have you made any analysis of the
"Syrup of Figs" put up by the California Fig Syrup Co.,
and which is the subject matter of this suit?

A. Yes, sir.

Q. 27. Did you detect any figs in it or any trace of figs?

A. No, sir.

Q. 28. When did you make the analysis?

A. About a year ago, as near as I can remember.

Q. 29. Was it before or after this suit was com-
menced? A. I don't remember, I think it was after.

Q. 30. About that time you think, was it?

A. Yes, sir; I think it was a year ago last July.

Q. 31. You found other substances there did you?

A. Yes, sir.

Q. 32. What did you find?

A. I found extract of senna and sugar and alcohol
and flavoring oils.

Q. 33. What flavoring oils did you find?

A. Oil of peppermint, oil of cloves and I think oil of
coriander.

Q. 34. Could you detect any ginger? A. No, sir.

Mr. MILLER.—I will state in regard to our own formulas, that I expected to prove it by this witness. I will prove it by another witness who will immediately follow, under whose charge the formula has been.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. When did you first make an analysis of this alleged "Syrup of Figs" put up by the complainants?

A. About a year ago.

X. Q. 2. Is that the first time?

A. The first time I made an analysis.

X. Q. 3. How long have been in the employ of Worden & Co.? A. Between eight and nine years.

X. Q. 4. Do you know of an analysis having been made by Worden & Co. before that time? A. No, sir.

X. Q. 5. This is the first time that you have made any?

A. The first time.

X. Q. 6. Did you ever make an analysis more than once? A. Of this same preparation?

X. Q. 7. Yes, sir. A. No, sir.

X. Q. 8. That is, only one time?

A. The only time.

X. Q. 9. You found sugar in the preparation, did you?

A. Yes, sir.

X. Q. 10. In your opinion as a chemist, would it be possible for you to detect by analysis the presence of figs in the preparation if the figs were only in small quantities, or if it was not in large quantity?

A. If it was in any perceptible quantities, yes, I think I could detect them.

X. Q. 11. What would be the characteristics that you would expect to find if there were figs in the preparation?

A. Well, I would expect to find an extract having the odor and all the flavor and characteristic of the fig, if properly extracted.

X. Q. 12. When the skins and seeds are eliminated and there is nothing left but the mucilaginous substance, what is its taste?

A. It has got the characteristic taste of the fig.

X. Q. 13. It is sweet, isn't it?

A. Yes, sir; it is sweet; but it has got the same flavor.

X. Q. 14. It has got the same flavor? Now, in the analysis, if there had been a small quantity of fig juice, is it not possible that it would have escaped your attention?

A. I don't think so.

X. Q. 15. You think not? A. No, sir.

X. Q. 16. Now, how much fig juice would be required in a production of this kind to attract your attention so that you would discover it?

A. Ten or twenty per cent.

X. Q. 17. From ten to twenty per cent?

A. Yes, sir.

X. Q. 18. If it was less than ten per cent you think you could not?

A. I guess less; perhaps even five per cent.

X. Q. 19. You think perhaps even five per cent?

A. Yes.

X. Q. 20. Now, what do you mean by the percentage? Do you mean percentage of bulk or of weight?

A. I mean bulk; by measure.

X. Q. 21. In making an analysis of this kind, of such a production as fig syrup, can you tell what kind of sugar is used in its manufacture?

A. Yes, you can. You can tell whether it is cane sugar, or whether it is glucose.

X. Q. 22. What did you find here?

A. I found cane sugar.

X. Q. 23. Did you find any other sugar?

A. No, sir.

X. Q. 24. Did you look for grape sugar?

A. Yes, sir.

X. Q. 25. You looked for it? A. Yes.

X. Q. 26. You didn't find any?

A. I didn't find any.

Examination in chief of

GEORGE ALT, a witness called on behalf of respondents; sworn.

(By the EXAMINER.)

Q. 1. What is your full name? A. George Alt.

Q. 2. What is your age, residence and occupation?

A. My age is sixty-seven years; my occupation is farming.

Q. 3. Where? A. Nevada, Washoe county.

(By Mr. MILLER.)

Q. 4. How far from Reno do you live?

A. A little over four miles.

Q. 5. At what place? A. Glendale.

Q. 6. How long have you lived there?

A. Since 1863.

Q. 7. I notice in these articles of incorporation of the California Fig Syrup Company the following names of incorporators given: Richard E. Queen, James H. Kinkaid, George Alt, Simeon Bishop and Thomas E. Haydon. Are you the George Alt mentioned in that?

A. Yes, sir.

Q. 8. You are acquainted, then, with the gentlemen whose names have been given there?

A. Yes, sir; they are old acquaintances of mine.

Q. 9. How long have you known Mr. Queen?

A. About twenty-two or twenty-three years; something like that.

Q. 10. Did you know him up in Reno, Nevada, when you started to sell this preparation? A. Yes, sir.

Q. 11. Did you know him before the incorporation?

A. Yes, sir.

Q. 12. Who is this gentleman who is named here as James Kinkaid?

A. He is mining superintendent at the present time in Virginia at the Occidental Mining Works.

Q. 13. Do you know whether he had any connection with the California Fig Syrup Company now?

A. I think not.

Q. 14. Who is Simeon Bishop?

A. He is a doctor, living in San Francisco at the present time.

Q. 16. And he was connected with this institution at this time? A. Yes, sir.

Q. 16½. And who is Thomas E. Haydon?

A. Thomas E. Haydon is an attorney at law living in Reno.

Q. 17. Just state what was your connection with this California Fig Syrup Company a little more in detail regarding the manufacture of the medicine.

A. Well, I will have to commence from the start, I think. I put up money in regard to paying expenses from the first start of the concern. Afterward, I think in the latter part of 1881—the first part of 1882—1881 and '2—the winter of 1881 and '2—I went to manufacture it out at my place.

Q. 18. For whom were you manufacturing it?

A. For the Fig Syrup Company.

Q. 19. At what place? A. Glendale.

Q. 20. Was that manufacture there done in pursuance of an understanding between you and Mr. Queen and the other members of the company? A. Yes, sir.

Q. 21. Was all the fig syrup that was manufactured by the California Fig Syrup Company during those years manufactured by you at that place? A. Yes, sir.

Q. 22. In other words, that was the place of manufacture of the stuff? A. Yes.

Q. 23. Was that stuff that was then made sold by the California Fig Syrup Company? A. Yes, sir.

Q. 24. Now, will you please give the formula under which that fig syrup was then made. If you have any data in your possession, just produce it, and state how you came by it and what it is.

A. (Producing.) I came by this when I went to manufacture it. Mr. Queen turned it over to me. The company insisted upon him giving us the formula, so that it

would not be kept secret from them when I went to manufacture it.

Mr. OLNEY.—We have a right to see it before it is testified to.

Mr. MILLER.—Just show it to Mr. Olney. I guess Mr. Queen will be familiar with it.

Mr. OLNEY.—I want to ask the witness about the paper.

Mr. MILLER.—I objected to your interrupting the examination. I have not offered it in evidence yet.

Mr. OLNEY.—Very well, then, the witness can't testify in regard to it.

(Mr. MILLER.)

Q. 25. Mr. Alt, when you started in to manufacture this stuff up there for the California Fig Syrup Company, how did you get the formula by which to manufacture it?

A. Mr. Queen gave it to me.

Q. 26. Was it written out on a paper?

A. Yes, sir.

Q. 27. Where was it put?

A. The formula that he gave me first was given to me, and afterward the company insisted that they—

Mr. OLNEY (Interrupting).—I move to strike that out, that the company insisted.

Mr. MILLER.—He has not given it yet. I don't think it is fair to interrupt a witness in the midst of giving his testimony. You have a perfect right to object to a question and you have a right to move to strike it out.

A. The first formula was given to me to manufacture it by, and afterward the company objected upon making a record in our minute books of the formula. Mr. Queen

would not agree to that, but he said he would give us the formula and he would lock it up.

Q. 27. Was it written out on paper?

A. Yes, sir.

Q. 28. Was it locked up? A. Yes, sir.

Q. 29. Where?

A. In a tin box, left with the secretary. The secretary turned it over, I presume. I don't know anything about that.

Q. 30. Who was the secretary? A. Sol Levi.

Q. 31. Where does Sol Levi live? A. Reno.

Q. 32. Does he live there now? A. Yes, sir.

Q. 33. If I understand, this paper which you have produced, is not the original but it is a copy?

A. No, it was copied from it.

Q. 34. When and where was this copy made?

A. Made in Reno.

Q. 35. By whom? A. By Sol Levi.

Q. 36. When? A. In the spring of 1882.

Q. 37. Is it in his handwriting? A. Yes, sir.

Q. 38. Were you present there?

A. Yes, sir; I read it off to him to copy.

Q. 39. You read off the original to him?

A. Yes, sir.

Q. 40. And he made a copy? A. Yes, sir.

Q. 41. Then what was done with this copy?

A. He put it in his safe. It has been there ever since.

Q. 42. When did you get this copy from him?

A. About a week ago.

Q. 43. Is this a true copy of the original formula?

A. All except the ginger below there. That was added after I went to manufacturing.

Q. 44. I mean is this a correct copy of the formula as you manufactured the medicine?

A. That is the correct formula as I manufactured it.

Mr. MILLER.—Now I offer this in evidence and ask that it be marked.

Mr. OLNEY.—We object to its being received in evidence on the ground that it only purports to be a copy and does not come from the complainant and the original from which it is copied is not accounted for.

(Marked "Respondent's Exhibit No. 5.")

(By Mr. MILLER.)

Q. 45. Mr. Alt, I don't observe in this formula any figs. Were there not any figs in the medicine.

A. No, sir.

Q. 46. Do you mean to say there were no figs at all or anything in the shape of figs?

A. No, sir; none whatever.

Q. 47. Did you have any figs around the establishment?

A. I believe there was a sack bought and set in the wrapping house.

Q. 48. What was that done for?

Mr. OLNEY.—Wait a moment.

Q. 49. Figs? Where?

A. In the house where we wrap.

Q. 50. (By Mr. MILLER).—Who had that done?

A. Mr. Queen.

Q. 51. Did he give any reason for it?

A. Well, he wanted to keep up an appearance that we was using figs, he said.

Q. 52. But as a matter of fact there were no figs used at all? A. None whatever; no, sir.

Q. 53. During the whole time you were manufacturing it? A. Not any.

Q. 54. I noticed down at the bottom of this formula also some mention is made of ginger as follows: "Ground ginger is thrown between the layers of senna and pressed with the leaves together. It prevents griping." Now, had the medicine been made without the ginger at any time? A. Prior to that.

Q. 55. What had been the result?

A. There was considerable complaint about griping.

Q. 56. Where did the complaints come from?

A. From the parties who used the medicine.

Q. 57. Around Reno? A. Yes, sir.

Q. 58. What was this ground ginger put in there for?

A. It was presumed to stop the griping.

Q. 59. That is what it was put in there for, was it?

A. Yes, sir.

Q. 60. Did you have any complaints of griping after the ginger was put in?

A. No; not to any extent, I think.

Q. 61. Not to any extent? A. No.

Q. 62. Now, did you have any conversation with Mr. Queen wherein you stated the reason for having adopted this name, "Syrup of Figs," or anything in that connection?

A. Well, he thought it was a good name to sell it by;

that a great many people thought that figs was a laxative and he adopted the name for that purpose.

Mr. OLNEY.—I give notice that I shall move to strike out that answer on the ground that it is not responsive to the question and is not evidence.

Q. 63. Mr. MILLER.—Did Mr. Queen make any statement to you substantially of that kind? A. Yes, sir.

Mr. OLNEY.—I give notice that I make the same objection. I object to that question and also to the answer.

Q. 64. Mr. MILLER.—Had the name been adopted at the time that you became connected with the concern?

A. I think I was connected with it as soon as there was anything done in regard to the matter.

Q. 65. Did you have anything to do with the selecting of the name? A. I think not; no, sir.

Q. 66. Who had that?

A. Mr. Queen suggested that. Mr. Queen and Mr. Bishop talked to me about the name as soon as I came into it I put up some money right at the start; at least, I understood that it was right at the start. I never heard it mentioned before that.

Q. 67. They got the thing up and then you put up some money? A. Yes, sir; I put up some money.

Q. 68. I understand you to say that the name was selected by Mr. Queen, or by Mr. Queen and by Dr. Bishop?

A. Yes, sir. Mr. Queen—and Dr. Bishop. Dr. Bishop talked to me some time about it. Mr. Queen was the man that was handling the concern.

Q. 69. You have no connection with the corporation now, have you? A. None whatever.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. How long since you have been connected with the corporation?

A. It was the fall of 1883 that I became disconnected with it.

X. Q. 2. You had some trouble with Mr. Queen, did you not, at that time?

A. Not particularly with Mr. Queen, no.

X. Q. 3. You were a director of the corporation for a while, were you not? A. I was.

X. Q. 4. Up to what time?

A. The fall of 1883.

X. Q. 5. And didn't you have some trouble with Mr. Queen and the other stockholders, or some of the other stockholders about your connection with the company?

A. Well, I don't know as I had.

X. Q. 6. Didn't you have some law suits over the matter? A. Yes, sir.

X. Q. 7. You were removed as a director by order of the court, were you not?

A. Yes, sir; that is correct.

X. Q. 8. Did you have any personal dispute with Mr. Queen?

A. Well, I don't know whether I really had any words with him.

X. Q. 9. You looked upon him, however, as the man who was responsible for having you removed from the corporation, did you not?

A. Well, I don't know but what I thought it the majority of the stock. I presume they all petitioned. I considered that the company had me removed.

X. Q. 10. Well, Mr. Queen was responsible for it, wasn't he? A. Well, yes; perhaps he was.

X. Q. 11. You so regard him, as responsible for it?

A. Well, I regarded the "Syrup of Figs" company as responsible for it. They were the party that sued to have the old board removed.

X. Q. 12. Who was the largest stockholder in the company at that time?

A. Well, Mr. Queen was the largest. Mr. Queen and Mr. Haydon.

X. Q. 13. Don't you know that he was the man who caused these proceedings to be instituted?

A. Perhaps he was. I always presumed it was the petition from the majority of the stock.

X. Q. 14. Then you won't remember any personal quarrel with him about the affairs of the company?

A. No, I don't know as I do.

X. Q. 15. You and he have not been on friendly terms since, have you? A. Well, no; not at all, no.

X. Q. 16. Where is Glendale in Nevada?

A. It is in Washoe county, east from Reno four miles.

X. Q. 17. Is it a town?

A. Well, it is not a town at the present time; what you might call a town. It was a town once.

X. Q. 18. Was it a town in 1881? A. No, sir.

X. Q. 19. You have a farm there? A. Yes, sir.

X. Q. 20. It is simply the name of a place, isn't it, Glendale?

A. Well, before the railroad was completed Glendale was quite a town, and it always carries the name.

X. Q. 21. But since that time and in 1881 there was no town there, was there? A. No, sir.

X. Q. 22. Was there anybody living there when you were there at that time, near you? A. Oh, yes.

X. Q. 23. How far away?

A. Six hundred yards.

X. Q. 24. Now, you manufactured this medicine for how long a period at that place?

A. Well, I don't know as I could really tell. It is something less than two years.

X. Q. 25. Can you fix the time?

A. No, I could not fix it any nearer than that.

X. Q. 26. Now, are you satisfied that you manufactured that medicine for as long a period as one year.

A. Oh, yes; pretty near two years.

X. Q. 27. But you can't fix the time? A. No.

X. Q. 28. You are certain about that, that you can't fix the time? A. No, I can't fix the time.

X. Q. 29. Do you remember making an affidavit in the case of the California Fig Syrup Company against the improved Fig Syrup Company in this court?

A. No, sir.

X. Q. 30. Did you ever make an affidavit?

A. Not that I remember of.

X. Q. 31. Do you know Mr. Boone, the attorney?

A. No, sir.

X. Q. 32. Have you ever made an affidavit in any of the cases where the California Fig Syrup Company have

brought suit against the infringers before you came here?

A. No, sir.

X. Q. 33. Do you know where the medicine was manufactured before you commenced it? A. In Reno.

X. Q. 34. Who manufactures it? A. Mr. Queen.

X. Q. 35. Did you have anything to do with the manufacture there?

A. No. I would help them once in a while when I was in town.

X. Q. 36. What was the reason for moving the factory from there down to your farm?

A. Well, there was no conveniences where Mr. Queen had it.

X. Q. 37. Do you remember any discussion being had in regard to the fact that by going to your farm it would be more retired, so that people would not see how much medicine was manufactured?

A. That was one of the reasons, I guess.

X. Q. 38. That was one of the reasons?

A. Yes, sir.

X. Q. 39. That was one reason, wasn't it, that it was talked about? A. Yes, sir; one reason.

X. Q. 40. That your farm was a retired place?

A. Yes, sir.

X. Q. 41. And that if it was manufactured there, there was no likelihood of any body seeing what materials were used? Isn't that the fact?

A. Yes, sir; that was some of the talk.

X. Q. 41. That was some of the talk?

A. Yes, sir.

X. Q. 42. Don't you know that that was the reason that that factory was removed to your place?

A. Yes.

X. Q. 43. Did you at any time at that place, at Glendale, keep figs in sight, so that if anybody came there—

A. (Interrupting.)—Yes, sir.

X. Q. 44. You did that? A. Yes, sir.

X. Q. 45. You did that by direction of Mr. Queen.

A. Yes, sir; he ordered the figs.

X. Q. 46. That was at Glendale? A. Yes, sir.

X. Q. 47. Then you did have the figs at Glendale?

A. Yes, sir.

X. Q. 48. How many did you have there?

A. He got a sackful of them.

X. Q. 49. Where were they?

A. They were left in the wrapping house.

X. Q. 50. Left in the wrapping house.

A. Yes, sir.

X. Q. 51. Now, how many rooms were occupied in the manufacture and general preparations of this medicine?

A. One.

X. Q. 52. Just one room? A. Yes, sir.

X. Q. 53. Now, where was the wrapping house?

A. The wrapping-house was about a quarter of a mile away.

X. Q. 54. About a quarter of a mile away?

A. Yes, sir.

X. Q. 55. It was still on your farm, was it?

A. No, sir; it was a house we rented.

X. Q. 56. The house that you rented?

A. From a neighbor; yes, sir.

X. Q. 57. Now, what was there in what you call the wrapping-room?

A. That is where the medicine was taken and bottled and wrapped.

X. Q. 58. That was after it was manufactured at your place, it was taken there? A. Yes, sir.

X. Q. 59. And wrapped there? A. Yes.

X. Q. 60. And packed?

A. Yes, and packed there and shipped.

X. Q. 61. There is where you say this sack of figs was?

A. Yes, sir.

X. Q. 62. Now, don't you know that Mr. Queen instructed you always in the manufacture of this medicine to use figs? A. No, sir; never.

X. Q. 63. He did not? A. He never did.

X. Q. 64. You are positive about that? A. I am.

X. Q. 65. Your idea was that that sack of figs was there simply for the purpose of deception?

A. That is what he said himself; to keep it there and people would think we were using it.

X. Q. 66. You were interested in the company at that time? A. Yes, sir.

X. Q. 67. You were a party to that deception?

A. Yes, sir.

X. Q. 68. Did you manufacture any large quantity of medicine during that time?

A. Yes, sir; quite considerable.

X. Q. 69. You say that you were connected with the manufacture of this medicine from the start?

A. Yes, sir.

X. Q. 70. Do you know when the manufacture was commenced? A. Not exactly.

X. Q. 71. Now, as a matter of fact, Mr. Queen came to some people there in Reno and told them that he had a good preparation and talked about organizing a company, did he not, and you amongst the number?

A. Yes, sir; something to that effect; that he could get up something, that he was about to get up something.

X. Q. 72. About to get up a company?

A. Yes, sir.

X. Q. 73. That was the first that you knew about it?

A. Yes, sir.

X. Q. 74. He had been making and selling it for some time, hadn't he?

A. I think not; no, I never saw any sold until after.

X. Q. 75. You never saw any sold until after the company was formed? A. No, sir.

X. Q. 76. What made you think it was a valuable production if it never had been sold to your knowledge?

A. Well, he was telling what could be done with it.

X. Q. 77. Are you in the habit of making investments in a concern without knowing whether or not it will be a money-making concern in your opinion?

A. He asked me to put up some money—a hundred dollars—to make a test.

X. Q. 78. What test?

A. To make a test of the medicine, to see if it would go before the people.

X. Q. 79. He asked you to put up one hundred dollars?

A. Yes, sir.

X. Q. 80. Did you put it up? A. Yes, sir.

X. Q. 81. Was that all you put up?

A. No; I put up money afterward.

X. Q. 82. You put up money afterward? [*No answer.*]

X. Q. 83. Now, how long before this, before you put up any larger amount, was it that you put up this one hundred dollars to make the test?

A. Well, I could not tell that. It was some time, long afterward.

X. Q. 84. How much did you put up afterward?

A. I think in all about four hundred dollars.

X. Q. 85. Now don't you know that at the time that Mr. Queen did this that the medicine had been sold already very largely? A. I do not.

X. Q. 86. You don't know that? A. No, sir.

X. Q. 87. That might be the fact without your being able to remember it at this time, might it not?

A. Well, it might have been sold without my knowledge.

X. Q. 87. What?

A. It might have been sold some and I not know anything about it. But my putting up the one hundred dollars—it was to get it before the public to ascertain if it would sell. I was willing to risk one hundred dollars in it.

X. Q. 88. You can't fix that time?

A. No, I can't fix that time. Perhaps 1879; not far from that; 1878 or 1879.

X. Q. 89. Do you remember at any time when the sales commenced to be quite large?

A. About 1881 or 1882.

X. Q. 90. About 1881 or 1882?

A. About 1881.

X. Q. 91. Now, when was it that you put up the one hundred dollars?

A. Well, I could not tell you exactly; along between the time that the first was put up and the time that I went out of the concern.

X. Q. 92. You say you are a farmer, Mr. Alt?

A. Yes, sir.

X. Q. 93. How long have you been a farmer?

A. I have been a farmer where I live since 1863.

X. Q. 94. You have been living at that same place all the time? A. Yes.

X. Q. 95. That is about four miles, you say, from Reno? A. Yes, sir.

X. Q. 96. Now, sir are you still of the belief that you never made affidavit in the case of the California Fig Syrup Company against the Improved Fig Syrup Company?

A. I am not positive. I can't remember anything about it.

X. Q. 97. You don't remember having made any such affidavit?

A. I may have made one but I don't remember anything about it.

X. Q. 98. Now, I show you a printed copy of your affidavit.

Mr. MILLER.—I object to that unless he shows him the original.

A. I may have made the affidavit but I forget now.

X. Q. 99. (Mr. OLNEY.)—Look at that printed copy now, and I will ask you if that does not refresh your memory?

A. Well, I suppose I did make that, too. I forgot all about it.

X. Q. 100. Do you remember now of having made such an affidavit?

A. I do not remember now, but that certainly is the affidavit.

X. Q. 101. Do you remember any one coming to you and asking you to make an affidavit in the case?

A. Well, that is something that had entirely slipped my memory.

X. Q. 102. You don't remember that, then?

A. No, I do not.

X. Q. 103. You don't remember going before the clerk of the District Court of Washoe county and swearing to the affidavit.

A. Well, it is something that had entirely slipped my memory.

X. Q. 104. Well, it is a fact, then, that you don't remember? A. I don't remember.

X. Q. 105. You don't remember who came to you about it?

A. No, no, I don't remember anything about it. Undoubtedly, I made that affidavit; no question about it.

X. Q. 106. I will ask you, Mr. Alt, not to go away until I can get the original affidavit to show you. The cross-examination is suspended. The witness is now shown a paper entitled the "California Fig Syrup Company (a corporation), vs. the Improved Fig Company (a corpo-

ration) et al—an affidavit of George Alt, and filed with the Clerk of this Court on the second day of May, 1892. Is that your signature, Mr. Alt?

A. Yes, sir. I undoubtedly made that, but I don't remember anything about it now.

X. Q. 108. You don't remember any correspondence with anyone here in San Francisco in regard to it?

A. No sir; I don't.

X. Q. 109. I see that in this affidavit you state that you acted as president of this corporation from 1882 until October 30, 1883? A. Yes, sir.

X. Q. 110. And, further than that, that during that time you manufactured the article?

A. I manufactured it the year previous to that.

X. Q. 111. The year previous to that?

X. Q. 112. The statement is contained in this affidavit as follows: "Affiant avers that he was engaged in the manufacture of complainant's laxative compound, commonly known as 'Syrup of Figs' or 'Fig Syrup,' under the direction of R. E. Queen, one of the officers of said company, and now the president and general manager thereof, from January 1, 1882, until October 30, 1883."

A. I was president.

X. Q. 113. Now you say that you were manufacturing it during that time? A. Well, so I was.

X. Q. 114. Is that a fact?

A. Yes, sir; and I manufactured it previous to that year.

X. Q. 115. You manufactured it before that time?

A. At Glendale.

X. Q. 116. At the same place? A. Yes, sir.

X. Q. 117. Now, previous to what time was it that you were manufacturing it at Glendale? Previous to Jan. 1, 1882? A. Yes.

X. Q. 118. You say in your affidavit that you manufactured it from the first of January, 1882, to the thirtieth day of October, 1883? A. Yes, sir.

X. Q. 119. Now, did you make it previous to that time? A. I did.

X. Q. 120. How long previous?

A. I could not say. Sometime previous.

X. Q. 121. But you don't remember when you commenced?

A. No, I could not say when I commenced.

X. Q. 122. Did you commence manufacturing it before you became president?

A. Yes, sir—oh, yes.

X. Q. 123. Do you know where you got these dates when you swore to this affidavit?

A. No, I could not tell you that.

X. Q. 124. Because you don't remember anything about the affidavit, I suppose? A. No, sir.

(By Mr. MILLER.)—Will you put that affidavit in evidence? You have examined him in regard to it and it will be unintelligible to the Court without the affidavit being in. Will you offer the affidavit in evidence?

Mr. OLNEY.—I will not.

Mr. MILLER.—I offer the affidavit, then, in evidence, inasmuch as the counsel who has produced it declines to do so, and I ask that it be copied in the record.

(Note by stenographer.—Following is a copy of the affidavit last above referred to:)

*In the Circuit Court of the United States, in and for the
Northern District of California, Ninth Circuit.*

CALIFORNIA FIG SYRUP CO. (a Cor-
poration),

Complainant,

vs.

IMPROVED FIG SYRUP CO. (a Cor-
poration),

Respondent.

Affidavit of George Alt.

United States of America,

Northern District of California,

City and County of San Francisco.

} ss.

George Alt, being first duly sworn, deposes and says: "That he was one of the original incorporators of the complainant corporation, and acted as president of said corporation from June, 1882, until October 30, 1883.

Affiant avers that he was engaged in the manufacture of complainant's laxative compound, commonly known as 'Syrup of Figs,' or 'Fig Syrup,' under the direction of R. E. Queen, one of the officers of said company, and now the president and general manager thereof, from January 1, 1882, until October 30, 1883; and that he, said affiant, thereby became acquainted with the ingredients which constitute complainant's said compound. Affiant further

avers that said compound, during the said time, and while said affiant was so engaged in its manufacture, contained no fig extract or syrup of figs, and that no figs whatsoever were used in manufacturing said compound.

That the factory of the complainant corporation, during the time hereinbefore mentioned, was situated in Glendale, State of Nevada.

Affiant further avers that said R. E. Queen, president and general manager of said complainant corporation, said to this affiant that it would be well to keep figs in sight, in order that people coming into the factory would think that figs were used in the manufacture of the compound. Affiant further avers that said figs were placed on exhibition solely for deception, and were never used in the manufacture of said 'Syrup of Figs,' during the time that said affiant was engaged in the manufacture thereof.

Affiant further states that he has no knowledge of any change having been made in the formula used while he was manufacturing the fig syrup; and avers that said R. E. Queen wrote to this affiant and asked him for the formula of 'Syrup of Figs' used by affiant while he was so as aforesaid manufacturing said compound, and after this affiant had ceased to have any interest in the said corporation.

GEORGE ALT.

Subscribed and sworn to before me this twenty-ninth day of April, 1892.

[Seal]

O. H. PERRY,

Clerk of the District Court, Washoe County, Nevada."

Redirect Examination.

(By Mr. MILLER.)

R. Q. 1. Now, Mr. Alt, you were asked something about a lawsuit that was between you and Mr. Queen and the company, or some of those people connected with the California Fig Syrup Company. Will you just state how it arose and what it was about?

A. Well, it was talked quite a while—

Mr. OLNEY (interrupting).—I object to that as irrelevant and immaterial and incumbering the record uselessly.

Mr. MILLER.—I fully agree with you that it was irrelevant. I objected to it. You brought it out and I shall therefore have to explain the whole matter. I entered the further objection that it is immaterial what the lawsuit was about and any facts in regard to it, except the fact that there was a law-suit between the parties and that Mr. Alt was removed from the company.

R. Q. 2. (By Mr. MILLER.)—Now, just go on and explain the matter, Mr. Alt.

A. Well, Mr. Queen got control of the stock in some way or other, he and his friends did. They went into Court and brought an action and had the old board ousted and elected a new board of their own.

R. Q. 3. Who was in the old board?

A. Well, I don't believe my memory would be good enough to tell.

R. Q. 4. Were you in the old board?

A. Yes, sir.

R. Q. 5. You were one of the old board?

A. I was one of the old board. I was president of the company at the time.

R. Q. 6. And you were president of the company at the time? A. Yes, sir.

R. Q. 7. And you say Mr. Queen got hold of a majority of the stock in some way and brought a suit to oust the old board and have a new one appointed?

A. Yes, sir.

R. Q. 8. Did he have a new one appointed?

A. Yes, sir.

R. Q. 9. Did you have a new one appointed?

A. Yes, sir.

R. Q. 10. Do you know who they were?

A. Well, I presume I could tell. Himself, a man by the name of Quinn, Mr. Haydon, Mr. Congdon. The other I can't remember.

R. Q. 11. Who was this Mr. Quinn that you refer to?

A. He is a hardware man in Reno. He is a merchant.

R. Q. 12. Who is this Mr. Haydon?

A. Mr. Haydon is an attorney at law in Reno.

R. Q. 13. What connection did he have with Mr. Queen?

A. There was some connection, I believe.

R. Q. 14. What became of your stock in the company?

A. It was sold for assessments.

R. Q. 15. What board was it that levied the assessments on it?

A. The new board, the board that ousted us. After we were ousted that board levied an assessment to absorb the stock.

R. Q. 16. In other words, then, the whole transaction

was about this; that Mr. Queen got a majority of this stock in some way or other, got up this suit and ousted the old board and then levied an assessment upon the stock, or had the new board levy an assessment on the stock, and your stock was sold out for that assessment?

A. Yes, sir; that is correct.

R. Q. 17. Was anybody else's stock treated in that way? A. Yes, sir.

R. Q. 18. Whose stock?

A. I think Levi Bros.' stock was treated in that way, Mr. Thyres'—a man by the name of Mr. Thyres--

R. Q. 19. (Mr. OLNEY.)—How is the name spelled?

A. T-h-y-e-s, I think.

R. Q. 20. (By Mr. MILLER.)—What became of Dr. Bishop's stock, do you know?

A. I forget what action was taken with his. I don't know what became of his. I can't remember. I think he sold his before, prior to this; I think he sold his.

R. Q. 21. Do you remember how much of an assessment they levied on the stock? A. I do not.

R. Q. 22. How many shares did you have?

A. I was in control of twenty thousand.

R. Q. 23. And there was one hundred thousand in the whole company, I believe? A. Yes, sir.

Examination of

W. S. MORRISON (recalled).

(By Mr. MILLER.)

Q. 1. Mr. Morrison, will you please produce the formula that was used by Clinton E. Worden & Co. in

the manufacture of this "Fig Syrup" or this laxative "Fig Syrup" before the injunction was served on you?

A. Yes, sir; that is the formula. (Producing.)

Q. 2. Is that the formula which you now produce?

A. Yes, sir.

Q. 3. And was the stuff manufactured according to that formula? A. Yes, sir.

Mr. MILLER.—We offer that formula in evidence and ask that it be marked Respondent's Exhibit No. 6.

Mr. OLNEY.—We object to that as incompetent, irrelevant, and immaterial.

(Marked "Respondents' Exhibit No. 6.")

Q. 4. (By Mr. MILLER.)—You were asked something about the henbane that was put into this medicine. Under what name is it specified there?

A. Hyoscyamus.

Q. 5. For what purpose do you understand that was put into the medicine?

A. As a sedative, to prevent griping.

Q. 6. You were asked also about henbane being a poison. It is a poison, I believe, is it?

A. Yes, sir; in overdoses.

Q. 7. In overdoses? A. Yes, sir.

Q. 8. Is it put into this medicine in such doses as to be deleterious? A. No, sir.

Q. 9. Or is it put in in such doses as to be beneficial?

A. Beneficial.

Q. 10. You were also asked something, yesterday, regarding records kept of fruit juice manufactured at the establishment of Clinton E. Worden & Co.?

A. Yes, sir.

Q. 11. In what form are those records, as you call them, kept?

A. Just simply memorandums of my own, for my own convenience.

Q. 12. Pencil memorandums? A. No, sir.

Q. 13. What are they written in?

A. They were written in a book, a pasteboard book, an ordinary book.

Q. 14. That was under your charge in the manufacturing department? A. Yes, sir.

Q. 15. But what did you put down in that book?

A. Such memorandums as I thought would be of use to me in the future manufacture of stock, as a guide to the amount to make.

Q. 16. Did you put down in that book all this stuff that was manufactured? A. No, sir.

Q. 17. Did you put in there such memorandums as you thought would be material, or thought would be useful to you at some time? A. Yes, sir.

Q. Now, what becomes of those books or that book?

A. Well, after they become old they have been destroyed.

Q. 19. Have you got any of those books now?

A. Not in that department; no, sir.

Q. 20. What do you mean by that department?

A. Well, their laboratory is divided into various departments. Each department keep more or less of a record of their work.

Recross Examination.

(By Mr. OLNEY.)

X. Q. 1. Where are those books that you mentioned yesterday? A. They were destroyed.

R. X. 2. You haven't got them, then?

A. No, sir.

R. X. 3. When were they destroyed?

A. Last July.

R. X. 4. Of this year? A. Yes, sir.

R. X. 5. How far back did those books go that were destroyed last July?

A. I don't know, I could not state.

R. X. 6. Five years?

A. I could not state as to the time.

R. X. 7. Do you remember any time when the records kept by you were destroyed before last July?

A. Yes, sir.

R. X. 8. When?

A. I could not state as to the dates.

R. X. 9. Do you remember more than one destruction of books? A. I could not state.

R. X. 10. Did those books ever pass out of your hands?

A. Not to my knowledge.

R. X. 11. Who destroyed them? A. I did.

R. X. 12. What did you mean then when you said that they were not in your department?

A. I didn't state that they were not in my department.

R. X. 13. What?

A. I didn't state that they were not in my department.

R. X. 14. What did you state in that connection?

A. In answer to a query as to whether I kept any records, I said, yes.

R. X. 15. You spoke about these books and you said they were not in your department? A. No, sir.

R. X. 16. What books did you have reference to if you didn't have reference to the records kept of the quantity of material or stuff manufactured? What other books did you have reference to when you answered that question?

A. The laboratory is divided into departments and each department has more or less of a record of their work.

R. X. 17. How did you destroy those books?

A. I burned them up.

R. X. 18. Was there many of them?

A. Yes, sir.

R. X. 19. Running back for a considerable period of time, were they not? A. Yes, sir.

R. Q. 20. Did those books also contain a record of the quantity of laxative fig syrup which had been manufactured? A. I don't know.

R. X. 21. You don't know? A. No.

R. X. 22. You did manufacture laxative fig syrup, did you not? A. Yes, sir.

R. X. 23. It was done under your supervision?

A. Yes, sir.

R. X. 25. You kept an account of the amount manufactured, did you not? A. No, sir.

R. X. 25. You did not? Was any account kept?

A. No, sir.

R. X. 26. None was kept at all.

A. Not by me.

R. X. 27. Not by you? A. No, sir.

R. X. 28. Was any account kept by anybody?

A. Not to my knowledge.

R. X. 29. Still, the manufacture was done under your direction? A. Yes, sir.

R. X. 29. Do you aim to keep an account of all the materials you manufacture in your establishment?

A. No, sir.

R. X. 30. What parts do you keep an account of?

A. We keep an account of tablets and pharmaceuticals as a guide for stock-taking.

R. Q. 31. What?

A. As a guide for stock-taking.

R. X. 32. That is all?

A. That is all.

R. X. 33. Don't you take account of stock of other preparations made by you except those you have mentioned? A. In a way, yes.

X. Q. 34. In a way, did you say?

A. That is, as we manufacture, and an article is new or the sale is small, why, we keep a record so as to see how much to make. But if it becomes a staple we don't keep a record any longer.

R. X. 35. Then you don't know how much of any article you manufacture when it becomes a staple?

A. No, sir.

R. X. 36. Do you know what materials are used? That is to say, do you keep a record of the materials used?

A. No, sir.

R. X. 37. Then you don't know whether these books that you destroyed last July contained a record of the quantity of laxative fig syrup manufactured by you or not? A. No, sir.

R. X. 38. Do you know whether or not they contained a record of the quantity of fig juice manufactured by you?

A. I know that they contained some record of it, but whether of all or not I could not tell.

R. X. 39. Are you keeping such a record book now?

A. Not of all departments; no, sir.

R. X. 40. Well, of all the manufacturing department?

A. There are several.

R. X. 41. You keep several record books, do you?

A. I keep one; yes, sir.

R. X. 42. Do you keep a record now, at the present time, of articles manufactured in that department?

A. I keep a record of only one department, myself, now.

R. X. 43. What department is that?

A. Tablets.

R. X. 44. What? A. Tablets, tritulates.

R. X. 45. That is the only one you keep?

A. That I keep myself; yes, sir.

R. X. 46. Is there any other kept of the article manufactured in your establishment that you know of?

A. Yes, sir.

R. X. 47. What are they?

A. Fluid extracts and pills.

R. X. 48. Fluid extracts and pills. Now, is there any other? A. Not that I know of.

R. X. 49. None other that you know of?

A. No, sir.

R. X. 50. How long since your establishment ceased to keep a record of the articles manufactured?

A. We never kept an accurate record of everything manufactured.

R. X. 51. Did you keep a substantial record of everything that was manufactured?

A. No, sir; more of a memorandum, as I stated, for the purpose of stock-taking.

R. X. 52. Still you kept it, as you testified yesterday?

A. I said I kept a memorandum for the purposes of stock.

R. X. 53. Was that the extent of your testimony as you understand it? A. Yesterday; yes, sir.

R. X. 54. You didn't state then that you kept a record of the articles manufactured in the concern?

A. I didn't state that I kept a record of everything; no, sir.

R. X. 55. Have you made an examination since you were on the stand yesterday to ascertain whether you had any record of fig juice manufactured by the company?

A. Yes, sir.

R. X. 56. Did you find any such record?

A. I found that we had bought figs at different times.

R. X. 57. How long back? How far back?

A. I think it was in 1888.

R. X. 58. Were you connected with the establishment in 1888? A. Yes, sir.

R. X. 59. You found that you had made a purchase of some figs in 1888? A. Yes, sir.

R. X. 60. Did you find any other record of fig juice having been manufactured? A. Yes, sir.

R. X. 61. Did you find any record of fig juice having been manufactured?

A. No; no record of any other juice having been manufactured.

R. X. 62. But you did find a record of some figs having been purchased? A. Yes, sir.

R. X. 63. What were the dates of those purchases?

A. I didn't see any dates except 1888 and 1887.

R. X. 64. Do you know whether or not there is any record of any figs having been purchased subsequent to those dates?

A. No, sir; I don't know. There are a great many things purchased for cash without a record.

R. X. 65. What things are you in the habit of purchasing for manufacturing purposes that you don't keep a record of?

A. Things that are bought for cash, especially in the line of fruit which was bought on the open market.

R. X. 67. You don't keep any record, then, of those articles which you bought for cash?

A. I do not; no, sir.

R. X. 68. Is there anyone in the establishment that does? A. Not that I know of.

R. X. 69. How long have you been in the habit of labeling the fig juice that you manufacture?

A. Since its first manufacture.

R. X. 70. Since its first manufacture?

A. Yes, sir.

R. X. 71. Then you used the same label? That is, printed at the same time? A. Yes, sir.

R. X. 72. You have a stock of those on hand, have you? A. Yes, sir.

R. X. 73. Do you know how long you have had those labels? A. I think in 1888.

R. X. 74. You have got a record of that purchase, have you?

A. Well, I have a record of the estimate of cost of the fig juice made in 1888. That is the only record I could find.

R. X. 75. You have no record of the labels having been purchased in 1888?

A. Well, we print our own labels.

R. X. 76. You print your own labels?

A. Yes, sir.

R. X. 77. Do you do your own printing?

A. Yes, sir.

R. X. 78. Does the establishment keep a record of the printing done? A. Not that I know of.

R. X. 79. You have a printing establishment in your own house, do you? A. Yes, sir.

R. X. 80. You set up the type? A. Yes, sir.

R. X. 81. And print them yourselves?

A. Yes, sir.

R. X. 82. Did you ever have a label printed with the words "Fig juice" on it?

A. Not that I know of. I have no recollection so far back.

R. X. 83. Here is the label on defendant's exhibit No.

2. The words are written in ink, "Fig Syrup for soda fountain use." When were those words written there?

A. Yesterday.

Redirect Examination.

(By Mr. MILLER.)

R. Q. 1. Where was this stuff that is contained in the bottle labeled "Fig juice" taken from yesterday?

A. Taken from a case of fruit juice.

R. Q. 2. From the stock that was on hand?

A. Yes, sir.

R. Q. 3. I presume it was brought down here simply as a sample, was it? A. Yes, sir.

R. Q. 4. I presume there is a regular bookkeeper in that establishment, is there not? A. Yes, sir.

R. Q. 5. Do you have anything to do with the books?

A. No, sir.

Recross Examination.

(By Mr. OLNEY.)

R. X. 1. When was that fig juice manufactured from which that sample was taken?

A. I could not state.

Examination in chief of

HARRY N. GRAY, a witness called on behalf of respondents; sworn.

(By Mr. MILLER.)

Q. 1. Please state your name, age, residence, and occupation.

A. Harry Nathaniel Gray; my residence is the California Hotel; my occupation, I am a contractor; I also operate quarries.

Q. 2. How long have you resided in California?

A. I have resided here twelve years, about.

Q. 3. During all that time have you been engaged in this same business? A. Yes, sir.

Q. 4. That is, the business of a contractor?

A. Yes, sir.

Q. 5. What is the name of your firm?

A. Gray Brothers.

Q. 6. Do you know anything about pharmacy and chemistry? A. Not as an expert; no.

Q. 7. Have you ever studied pharmacy?

A. I never studied it.

Q. 8. Did you ever study medicine? A. No, sir.

Q. 9. Did you ever know an article of medicine on the market called "Syrup of Figs"?

A. I have known of it; I have seen it.

Q. 10. You have seen it?

A. Yes, sir; I have seen it in the stores. I have seen it advertised.

Q. 11. Have you ever taken any of it?

A. I never took any of it; no.

Q. 12. You don't know anything, of your own knowledge, then, about what its ingredients are, do you?

A. I only know—I suppose it is syrup of figs.

Q. 13. But I mean to say, you don't know positively, of your own knowledge, what the ingredients actually are?

A. No, I never saw it made.

Q. 14. You never saw it made. You never saw it analyzed, either, did you?

A. No, I never saw it analyzed.

Q. 15. I will ask you this question: Are you aware of any popular impression amongst people regarding the supposed laxative qualities of figs?

A. I know that the general impression is that they are laxative.

Q. 16. How long have you known of that impression?

A. I have known of it all my life; not all my life; I have known of it a good while, have known that figs are good for some things.

Q. 17. Now, when you first heard this name "Syrup of Figs," what did you suppose the article was, from hearing that name?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I supposed it was a syrup made from the fruit of figs.

Q. 18. That was the impression? That was the impression which it produced on your mind, was it?

A. Yes, sir.

Q. 19. If you were to see a bottle in the drug store

labeled "Syrup of Orange," what would you suppose was in the bottle?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I would suppose it was a syrup made from the fruit.

Q. 20. What would you suppose if you saw a bottle labeled "Strawberry Syrup," or "Syrup of Strawberries"? What would you suppose in regard to that?

(The same objection.)

A. I would suppose that it was made from the fruit of strawberry.

Q. You are familiar with syrups, such as strawberry syrup and raspberry syrup and fruit syrups of that kind, are you not?

A. Yes, sir; that is, I know something about them.

Q. 22. You have seen those syrups on sale at soda water fountains, have you?

A. Yes, I used to drink a good deal of it once.

Q. 23. You say that if you saw a bottle for the first time labeled "Syrup of Figs" or "Fig Syrup," the impression that would be produced on your mind from that name alone, you not knowing of the actual constituents would be that it was a syrup made from a fruit, the fig?

A. Yes, sir.

Q. 24. That would be about on a par with your seeing a barrel of cement, a barrel labeled cement, you would suppose that it contained cement?

(The same objection.)

A. Yes, sir; I would suppose so.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Who asked you to testify in this case?

A. No one asked me to testify in this case.

X. Q. 2. Who asked you to come here?

A. I was asked by Mr. Worden if I had ever heard of "Syrup of Figs," and I told him that I had seen it advertised and seen the bottles with the labels.

X. Q. 3. When did you first hear that I was connected with this case?

A. Just this moment.

X. Q. 4. Then you knew that I was connected with this case?

A. This is the first I ever knew of it, seeing you here.

Mr. OLNEY.—It is no pleasure to me, I am sure.

The WITNESS.—Well, it is none to me, I can assure you. But it makes no difference to me.

Examination of

F. C. KEIL (recalled).

(By Mr. MILLER.)

Q. 1. You were examined yesterday on a book called the *Pharmacopia Universalis* and you had only the second volume of it at that time? A. Yes, sir.

Q. 2. Will you now produce the first volume of it relating to that subject matter?

A. You have it in your hand.

Q. 3. This is the one that you now produce, is it?

A. This is the one which I now produce. It is a universal pharmacopia printed in Weimar in 1832, first volume.

Q. 4. Now what do you find in this first volume relating to the subject-matter that you found in the second volume yesterday?

Q. 5. I find printed in Latin, "A decoction of figs," or as it is called in French, "Tisana of Pectoral fruits."

Q. 5. (By Mr. OLNEY.)—Pectoral?

A. Yes, something pertaining to the chest.

Q. 6. Mr. MILLER.—Read the whole of it.

A. It says later on: "Dried figs, 1 ounce, water, 1 pound cook and strain." Then it says in German: "Softening, lingering, a chest remedy to be drunk by the glass."

Q. 7. What was the matter that you found in the second volume of the book, yesterday?

A. It was a liquid confection of senna and figs.

Q. 8. And this first volume, I understand that you have just read from, further describes it?

A. In the first volume it is described under "Figs." In the second volume it is described under "Senna."

Q. 9. Now, Dr. Lengfeld referred yesterday to a work on pharmacology and therapeutics and materia medica, by T. Launder Brunton. Is this the book referred to which I now hand you? A. Yes, sir.

Q. 10. Will you please read from that book into the record the references therein pertinent to the matter of laxatives, and especially as regards any laxative properties of figs or other substances?

A. Under the head of purgatives it says, "Most articles of food which leave a large indigestible residue in the stomach, act as laxatives, which are oatmeal, bran bread, bran biscuits. Articles of food also which contain salts, of vegetable acids and sugar in considerable quantities also act as laxatives. The chief laxatives are"—referring I presume to that.

Q. 11. Just read it as it is.

A. "Honey, treacle, ginger-bread, manna, cassia, tamarinds, figs, prunes, sulphur, magnesia, castor oil; and, in small doses, figs, raspberries, and strawberries, in addition to containing sugar and vegetable acids have a number of small seeds which are absolutely indigestible, and these have probably a mechanical action in stimulating the bowels."

Q. 2. What you have just read is on page 338 and 339, I believe?

A. On page 338 and 339, yes, sir.

Q. 13. Now, will you please read from that book anything else that you find there about figs?

A. On page 897, heading "Artocarpeae" "Ficus U. S. P. Fig—the fleshy receptacle of ficus carica, bearing fruit upon its inner surface."

"Ficus B. P. Fig. The dried fruit of ficus carica, B. P. compressed, of a regular shape, fleshy, covered with an efflorescence of sugar, of a sweet fruity odor and a very sweet mucilaginous taste. When softened in water, figs are pear-shaped, with a scar or short stalk at the base and a small scaly orifice at the apex; hollow internally; the inner surface covered with enormous yellowish, hard, achenes.

“Composition—grape sugar (about 70 per cent) a little gum and fatty matter.

Proportions: U. S. P., *Confectio Sennae*; Dose, 60 to 120 grs.; B. P., *confectio sennae*; Dose, 60 to 120 gr. Use. Figs are used locally as poultices by splitting them and applying them to the inflamed part, as in gum boils, dental abscesses. etc. Figs are chiefly employed as a domestic laxative. They are useful, given in large quantities, when a person has swallowed a hard substance, by forming a bulky mass which will sheath the substance and protect the intestines from injury. In such cases, purgatives are to be avoided.”

Q. 14. Just state what is the title of the book which you have been reading from.

A. It is a book on pharmacology, therapeutics, and materia medica, of T. Lauder Brunton, M. D., D. S. E., F. R. S., Philadelphia, 1885.

Q. 15. Now, I hand you respondent's exhibit No. 6, which is the formula used by Clinton E. Worden & Co., in the manufacture of laxative fig syrup, and ask you if you are familiar with that?

A. I have seen this formula in the office.

Q. 16. What is the object, if you know, of the ground henbane that is used in the compound?

A. The object of the henbane is to prevent any possible griping which is liable to arise from senna.

Q. 17. Is the henbane there in such proportions as would render it dangerous? A. No.

Q. 18. Is there any other substance put in there also for the purpose of preventing griping?

A. Oil of peppermint and ginger, I should consider the two chief articles to prevent griping besides henbane.

Q. 19. Now, I will hand you respondent's exhibit No. 5, containing the formula of the California Fig Syrup Company, and ask you to point out what difference you find between the two formulas.

Mr. OLNEY.—We object to that as irrelevant and immaterial, and asking for a comparison upon a subject where no comparison by the witness is needed.

A. There is no henbane in the second formula, and there is no peppermint oil and no definite proportions of ginger.

Q. 20. State any substantial difference in a medical sense between the two preparations?

A. Formula 1 submitted will probably be less griping in its effects.

Q. 21. Would that be about the only difference between the two.

A. I have not figured up the proportions of senna, so I can't say positively whether it will be as active.

Q. 22. Do you mean that one might possibly be more active than the other?

A. More active than the other.

Q. Do you find any other differences between the two?

A. I can't say by casual examination of the formulas.

Q. 24. When did you first see this formula which has been put in evidence here as exhibit No. 5?

A. I saw it when handed to me by you.

Q. 25. How long ago?

A. I don' know; about ten or fifteen minutes.

Q. 26. Then I shall ask you to take a copy of the formula with you and study it over in comparison with your own formula, and I will recall you again after you have studied it.

Recross Examination.

(By Mr. OLNEY.)

R. X. 1. Mr. Keil, in reading the two first formulas to which your attention was called, you described one as a confection of senna. And I understood you to say that the other was the same thing under the name of figs. Is that correct or not?

A. No, that is not correct.

R. X. 2. What is the other one that is contained in the first volume?

A. The one contained in the first volume of the Universal pharmacopia is a decoction of figs.

R. X. 3. That is the name which is applied to it, is it?

A. That is the name which is applied to it.

R. X. 4. And is different from the confection of senna?

A. Yes, sir.

R. X. 5. The ingredients are different?

A. The ingredients are different. One contains figs alone, the other contains figs, senna, cassia, etc.

R. X. 6. What is the proportion of henbane used in the formula of the respondents?

A. It is less than one per cent of the largest dose given.

R. X. 7. Less than one per cent of the largest dose? How large is a dose?

A. From one to two teaspoonsful.

R. X. 8. How much of henbane would make the dose in senna?

A. I should say about four grains.

R. X. 9. What percentage would make it unsafe?

A. About four per cent of this preparation.

R. X. 10. How much would make it dangerous?

A. About six or eight per cent.

R. X. 11. In the use of henbane, as I understand it, it is for the purpose of overcoming the griping tendency?

A. Yes.

R. X. 12. Now, does it act as a narcotic?

A. In large doses, yes.

R. X. 13. How in small doses?

A. It does not act as a narcotic.

R. X. 14. What is the effect produced by small doses of henbane?

A. It is sedative; it has a soothing effect.

R. X. 15. And to some extent a narcotic, isn't it?

A. I would never personally consider it a narcotic, except in large doses.

R. X. 16. Does it not have the same effect that opium in similar doses does? A. No.

R. X. 17. What is the difference?

A. Opium has the property of enslaving the patient.

R. X. 18. I am talking about the physical effect upon the human body of a small dose of henbane and the same amount of opium, and I ask if the effect is not the same?

A. No.

R. X. 19. What is the difference?

A. You have to give a considerable smaller dose of opium to produce the same effect as would be produced by henbane.

R. X. 20. You can, however, by regulating the size of the dose, produce the same effect, can you not?

A. That I am unable to tell.

R. X. 21. Well, as a pharmacist, is that not your opinion, that the effect would be substantially the same, provided you regulate the size of the dose of each material so as not to produce any dangerous effect upon the patient?

A. My practical experience is not that.

R. X. 22. Now, how much smaller would the opium dose have to be to produce the same effect as a dose of henbane; say one per cent of henbane? Now, what per cent of opium would be necessary to produce the effect, the same effect?

A. About one-fourth of one per cent.

R. X. 23. Well, now, suppose in that preparation one-quarter of one per cent of opium is introduced, would not that practically have the same effect upon a patient as one per cent of henbane? A. No.

R. X. 24. What would be the difference?

A. Opium is conceded to be constipating; henbane is a laxative, conceded to be a laxative.

R. X. 25. Is that the only difference.

A. Yes, there is a difference, which I stated before, that opium is apt to enslave.

R. X. 26. No, I am not talking about the mental effect, but the physical effect?

A. I am not prepared to state that.

R. X. 27. The sedative effect which you obtain from one per cent of henbane, however, can be obtained by one-fourth of one per cent of opium; can it not?

A. Yes.

R. X. 28. (By Mr. ROWE.)—He does not mean the effect on the medicine, but the effect on the physical system.

Mr. OLNEY.—I ask of him in regard to the sedative effect on the patient.

(At the hour of 12:30 a recess was had until 2 P. M., when proceedings were had as follows):

Examination in chief of

HENRY E. HALL, a witness called on behalf of respondents; sworn.

(By Mr. MILLER.)

Q. 1. Will you please state your full name?

A. Henry E. Hall.

Q. 2. Do you live in San Francisco, Mr. Hall?

A. Yes, sir.

Q. 3. What is your business here?

A. I am in the wholesale jewelry business.

Q. 4. Where is your place of business?

A. 530 Market.

Q. 5. How long have you been in business in San Francisco? A. About nineteen years.

Q. 6. Have you any practical knowledge of chemistry or medicine? A. No, sir.

Q. 7. Did you ever see an article on the market called "Fig Syrup," made by the California Fig Syrup Company, as a laxative?

A. I have seen some kind of an article advertised; I could not say who it was made by.

Q. 8. You have seen such an article advertised?

A. Advertised. I have never taken it that I know of.

Q. 9. You have never taken it?

A. Not that I know of.

Q. 10. Now, when you first heard of the article, or saw it advertised as "Syrup of Figs," what impression was produced upon your mind as to the constituents of that article, if any?

(Objected to as incompetent, irrelevant, and immaterial.)

Q. 11. In other words, what impression, if any, did the name create in your mind, concerning the article?

A. That it was a syrup made of figs, a syrup, sugar, etc.

Q. 12. I presume you have known and heard of other syrups, have you not? A. Yes, sir.

Q. 13. Have you ever known or heard of raspberry syrup, strawberry syrup, or syrups of that kind?

A. Yes, oh, yes.

Q. 14. Now, when the words strawberry syrup are given, what impression is made upon your mind by that name?

(Same objection.)

A. That it is a syrup made of strawberry, or strawberry juice.

Q. 15. Do you mean from the fruit of the strawberry?

A. I mean from the fruit of the strawberry, yes.

Q. 16. Now, when you hear the name raspberry syrup, or strawberry syrup, what impression is created upon your mind?

A. That it would be a syrup made from strawberries.

Q. 17. You have seen or heard of syrup of that kind, in connection with soda water fountains, have you not?

A. Yes, sir.

Q. 18. And that would be the impression that would be conveyed to your mind from first hearing it?

A. The impression was that it would be a syrup made from that particular fruit.

Q. 20. Would that same line of testimony hold with regard to the syrup of figs or fig syrup when you heard it? A. Yes, sir.

Q. 21. Would you suppose it was made from the juice of the fig, the syrup made from the juice of the fig?

A. I would, yes.

Mr. MILLER.—You can take the witness.

Cross-Examination.

(Mr. OLNEY.)

Q. 1. When was it that you saw this advertised?

A. I could not tell you that. I have seen it advertised.

X. Q. 2. Did you read the advertisements?

A. I could not tell you that.

X. Q. 3. Did you ascertain what the article was to be used for?

A. Well, I don't know that I ascertained, that I went into it that far. I imagined that—

X. Q. 4. (Interrupting.)—I am asking—

A. (Interrupting.)—I didn't ascertain anything; no, sir.

X. Q. 5. Did you know what it was used for?

A. I thought I did.

X. Q. 6. Used as a laxative medicine?

A. That is what I thought it is used for.

X. Q. 7. Would you suppose that there was enough laxative quality in a syrup made from figs to act as a medicine in medicinal doses? Or did you give it any thought at all?

A. Well, I don't know. I don't know that I gave it any particular thought.

X. Q. 8. You didn't use the medicine?

A. I did not; no, sir.

X. Q. 9. You think you knew that it was to be used as a medicine, do you?

A. I think I did; yes, sir.

X. Q. 10. Well, did you give it sufficient thought to consider whether or not a juice made from figs, a fig juice, could be a medicine if taken in medicinal doses?

A. Well, I have heard, I think, somewhere that figs were supposed to be a laxative.

X. Q. 11. You have eaten figs, haven't you?

A. Yes, sir.

X. Q. 12. You know that if the fruit is laxative at all, it is only when it is eaten in large quantities, don't you?

A. Well, I don't know that I knew that.

X. Q. 13. Well, did you know that it was a laxative at all? A. I had supposed it was.

X. Q. 14. You knew nothing about it?

A. I am not a doctor.

X. Q. 15. You have frequently eaten figs?

A. Yes, quite frequently, not very frequently.

X. Q. 16. Did you suppose when you saw this medicine advertised that it was anything more than simply the juice of figs, or that it was a medicine to be taken in medicinal doses?

A. I supposed it was a medicine made from the juice of figs.

X. Q. 17. Did you really give it any thought, whatever?

A. Probably not any more thought than I would reading from any other advertisement in the paper.

X. Q. 18. You don't remember the time?

A. No, sir.

X. Q. 19. And you don't remember the impression that was made at the time, do you?

A. Beyond that fact that it was something advertised for its medicinal qualities.

X. Q. 20. You don't know where it was that you read the advertisement? A. No, sir.

X. Q. 21. You don't know whether it was in a newspaper or in a poster, do you?

A. Well, I should say it was in a newspaper.

X. Q. 22. You would say that it was in a newspaper, but you don't know that you read the advertisement, you say? A. No.

X. Q. 23. Do you know how long ago it was?

A. Oh, I have seen it a great many times, I think.

X. Q. 24. Well, when was it that this impression was formed on your mind? A. What impression?

X. Q. 25. That it was made from the juice of figs?

A. Whenever I read it?

X. Q. 26. That also made its impression on your mind, did it? A. Yes, sir.

X. Q. 27. You have never been disabused in regard to that? Or have you been told different, or learned different in any way?

A. Well, I don't know whether there is more than—when I say I have seen it advertised, I don't know whether I have seen more than one company's preparation advertised or not.

X. Q. 28. Well, assume that there are only one company's preparation advertised?

A. Yes. I have heard that there was no figs in a company's preparation.

X. Q. 29. You have heard that? A. Yes, sir.

X. Q. 30. Had you heard that about the time that you saw the advertisement? A. No, sir.

X. Q. 31. Since then? A. Yes, sir.

X. Q. 32. How long ago?

A. In the last day or so.

X. Q. 33. You haven't heard it before?

A. No, sir.

X. Q. 34. I understood you to say you never had used it at all?

A. I never have used it, sir; that is not to my knowledge. I don't remember ever having used it.

X. Q. 35. Do you know anybody having used it as a medicine?

A. No, sir. Well, let me see! I beg your pardon! I believe Mr. Miller told me he used it.

X. Q. 36. That was since you were subpoenaed in this case, wasn't it? A. Yes, sir.

Redirect Examination.

(By Mr. MILLER.)

R. Q. 1. One question I omitted to ask you. Have you heard of the popular impression that is prevalent among people as to the supposed laxative quality of figs?

A. I have always supposed that figs were laxative. I could not tell you where I obtained the impression, but I have obtained the impression—I may have obtained it from seeing this medicine, seeing this syrup of figs advertised.

R. Q. 2. You have had that impression?

A. I have had that impression for a very long time.

Examination in chief of

JOSEPH MADISON QUAY, a witness called on behalf of respondents; sworn.

(By Mr. MILLER.)

Q. 1. Mr. Quay, where do you reside?

A. The Pacific Union Club.

Q. 2. In this city and county? A. Yes, sir.

Q. 3. How long have you resided in California?

A. Thirty-two years.

Q. 4. What is your business?

A. Fiduciary agent.

Q. 5. How long have you been in that business?

A. Thirty-five years.

Q. 6. During all the time in California? A. Yes.

Q. 7. Have you any practical knowledge of chemistry and medicine? A. I have not.

Q. 8. Have you any more than the general and ordinary knowledge of those subjects than people at large are supposed to have? A. I have not.

Q. 9. Have you ever known or heard of syrups such as strawberry syrup, raspberry syrup, and syrups named after fruits? A. I have.

Q. 10. Have you seen them in drugstores in connection with soda fountains? A. I have.

Q. 11. Now, when you saw a bottle in a drugstore at a soda fountain and saw it labeled "Raspberry Syrup," what impression was made upon your mind as to the contents of that bottle?

(Objected to as irrelevant, incompetent and immaterial.)

A. Do I answer it?

Q. 12. Yes, sir.

A. It would convey to me that it was manufactured of whatever it claimed to be—raspberry, strawberry, or whatever it might be.

Q. 13. It would be just according to the name of the fruit that was in the bottle?

A. I have used raspberry and strawberry to make punches of. It tastes pretty strong of raspberry; I don't know whether it has got any raspberry in it or not.

Q. 14. It makes a raspberry taste, does it not?

A. Yes.

Q. 15. If you see a bottle labeled "Raspberry Syrup," what would be the impression conveyed to your mind?

(The same objection.)

A. That it was made of raspberries.

Q. 16. Have you ever seen or known of an article on the market called "Fig Syrup?" A. Yes, sir.

Q. 17. Where have you known about that?

A. I have seen the advertisement of it.

Q. 18. In the papers? A. Yes, sir.

Q. 19. Have you seen the advertisements of it on the walls and fences, also in the city? A. Yes, sir.

Q. 20. Those advertisements are quite common and prevalent, I believe, are they not?

A. Yes, sir; the proprietor of it built a house right alongside of a particular friend of mine. My attention was particularly called to it in that way.

Q. 21. Do you know of your knowledge what are the actual constituents of that medicine called "Syrup of Figs?"

A. No further than what I have read about it.

Q. 22. Have you ever used it for yourself?

A. I never have.

Q. 23. What impression was conveyed to your mind when you first heard the name "Syrup of Figs?"

(Objected to as irrelevant, incompetent, and immaterial.)

A. The impression was that it was a medicine and laxative, and I think it is so advertised.

Q. 24. What impression was conveyed to your mind as to any constituents of that medicine?

A. Well, I supposed it was made of figs, and was a laxative the same as any other kind of fruit.

Q. 25. Have you been aware of the popular impression among people regarding the supposed quality of figs?

A. Yes, sir.

Q. 26. How long have you been aware of such an impression as that? A. Ever since I was a child.

Q. 27. It is quite an ordinary, common impression among people, is it not? A. Yes, sir.

Q. 28. And when you saw this name, "Syrup of Figs," advertised as a laxative and when you knew of the popular impression that figs were laxative, what impression was conveyed to your mind from seeing this advertised name, "Syrup of Figs," or "Fig Syrup," as to the constituent elements, or any of the constituent elements?

(The same objection.)

A. I would suppose it was made from figs.

Cross-Examination.

(Mr. OLNEY.)

X. Q. 1. Did you observe that it was to be used as a medicine?

A. Yes, I think it is so advertised.

X. Q. 2. Did you suppose that a teaspoonful of this syrup of figs, if it was really syrup of figs, would act as a medicine, or did you give it any thought at all?

A. I didn't give it any thought at all.

Examination in chief of

CLINTON E. WORDEN, a witness called on behalf of respondents; sworn.

(By Mr. MILLER.)

Q. 1. Please state your name, age, residence, and occupation?

A. Clinton E. Worden; age, forty-six; residence, 1101 California street; occupation, manufacturing pharmacist.

Q. 2. What is the name of your institution?

A. Clinton E. Worden & Co.

Q. 3. Is that a corporation? A. Yes, sir.

Q. 4. Where is it located?

A. 214 Townsend street, San Francisco.

Q. 5. In this city and county? A. Yes, sir.

Q. 6. What is the general nature of your business?

A. Manufacturing all sorts of pharmaceutical preparations.

Q. 7. State, generally, about how many different preparations you manufacture?

A. I should think in the neighborhood of something from seven thousand to ten thousand.

Q. 8. When did you start into that business in San Francisco? A. About 1883.

Q. 9. Did you come to California at that time?

A. No, sir; two years before.

Q. 10. From what place did you come when you came to California? A. Detroit.

Q. 11. What business were you engaged in at Detroit?

A. Manufacturing pharmaceutical preparations with Frederick Stearns Co.

Q. 12. Who are Frederick Stearns & Co.?

A. Manufacturing pharmacists in Detroit.

Q. 13. And you have been employed by them?

A. Yes.

Q. 14. In what capacity did you come to San Francisco? A. I came first as their representative.

Q. 15. What did you do for them here?

A. Sold pharmaceutical preparations.

Q. 16. Were you manufacturing here at that time?

A. No, sir.

Q. 17. How long did you continue to sell for them?

A. About one year. The next two years before manufacturing I purchased and sold the goods myself.

Q. 18. From whom did you purchase them?

A. From Frederick Stearns & Co.

Q. 19. In what year did you start in to manufacture yourself? A. I think it was in 1883.

Q. 20. I understand you have been manufacturing ever since you started? A. Yes, sir.

Q. 21. You have built up quite a large business and trade? In what section of the country did you trade?

A. All over the western States, Australia, South America and countries adjacent to this Coast.

Q. 23. When did you first hear of a preparation, a laxative preparation, called "Syrup of Figs?"

A. The year, do you mean?

Q. 24. Yes.

A. Well, I first heard of it as an advertised article, I should say, seven or eight years ago.

Q. 25. Did Frederick Stearns & Co. ever manufacture an article called "Syrup of Figs?" A. Yes, sir.

Q. 26. When were they manufacturing?

A. I should say that they manufactured for ten or twelve years.

Q. 27. When did you commence to manufacture an article called "Syrup of Figs?"

A. And put it on the market as syrup of figs?

Q. 28. Yes.

A. After the suit of the California Fig Syrup Company against Frederick Stearns & Co. had been decided by the United States Circuit Court of Appeals.

Q. 29. There was a suit then between the California Fig Syrup Co. and Frederick Stearns & Co., was there?

A. Yes, sir.

Q. 30. And after that suit was finally determined, you put the article on the market, did you? A. Yes, sir.

Q. 31. Had you had a call for that article before that time? A. Yes, sir; many of them.

Q. 32. What did you do then?

A. Declined to put them up to fill the orders.

Q. 33. Why was it you declined?

A. I didn't know that I had a legal right to put them up.

Q. 34. When did you commence to put them up—what induced you to put them up then?

A. The decision of the United States Circuit Court of Appeals in the East. I supposed after that decision that I had a right to put it up for my customers.

Q. 35. Where did you hear of that decision?

A. I think first through the daily press, and afterward, undoubtedly, through the "Pharmaceutical Era."

Q. 36. What is the "Pharmaceutical Era"?

A. The "Pharmaceutical Era" is a pharmaceutical publication published in New York for the benefit of the druggists of the country. It has a large circulation.

Q. 37. Was that decision mentioned in that paper?

A. Yes, sir.

Q. 38. Did you read it in that paper? A. I did.

Q. 39. Did you understand from reading that paper that any one had a right to put up the article called "Syrup of Figs"?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I did.

Mr. OLNEY.—The witness' understanding is altogether immaterial.

Q. 40. (By Mr. MILLER.)—It was after that that you commenced to put it on the market as syrup of figs, was it? A. It was.

Q. 41. You have seen this formula here under which the article is put up in your establishment, have you?

A. Yes, sir.

Q. 42. Is that a correct formula?

A. That is a correct formula.

Q. 43. Now, what style of article is produced according to that formula? A. A laxative.

Q. 44. Is it an efficient laxative? A. Very.

Q. 45. How does it compare in quality with the laxative put up by the California Fig Syrup Company, called by them their "Syrup of Figs"?

(Objected to as incompetent, irrelevant, and immaterial; also, because it is not a matter within the knowledge of this witness.)

A. I would suppose that it would be a better preparation because it is not apt to be as griping.

Q. 46. What do you put in it to prevent its griping?

A. The licorice and henbane. The California preparation has the licorice, but I am told by my chemist that it has not the henbane.

Q. 47. What character of materials did you use in the preparation of this article? A. The very best.

Q. 48. What character of men as to competency do you employ in your manufactory?

(The same objection.)

A. The very best.

Mr. OLNEY.—There is no issue in this case as to the character of the defendant's employés.

Mr. MILLER.—I will say that if I remember the pleadings correctly, they state that we put a worthless and spurious article on the market that is dangerous to the system. If counsel desires to admit that our article is as good as his, then I have no objection to withdrawing the question.

Q. 49. Now, Mr. Worden, is there an article of trade or commerce in your line of business known as fig juice?

A. Yes, sir.

Q. 50. What is it used for?

A. Particularly for soda water syrup for flavoring, whenever the flavor of the fig is desired.

Q. 51. Have you from time to time manufactured such an article? A. Yes, sir.

Q. 52. For how many years have you been manufacturing such an article as that?

A. Well, for ten or more years.

Q. 53. Have you sold that article to the trade?

A. Yes, sir.

Q. 54. Do you keep it in stock? A. Yes, sir.

Q. 55. Does this bottle which has been offered in evidence, respondent's exhibit No. 2, and labeled "Fig Juice," represent that article? A. Yes, sir.

Q. 56. Here is another bottle that has been marked "Respondent's Exhibit No. 2," and labeled "Fig Syrup for Soda Fountain use." Just state what that article is, and how it is made?

A. That is made from the juice, with the addition of syrup, *from the fig juice with the addition of syrup.*

Q. 57. What does the syrup consist of? that is added?

A. White sugar and water.

Q. 58. So that the real difference between these two articles in the bottles one and two is, that bottle No. 1 is simply the pure fig juice, and bottle No. 2 contains the fig juice with the syrup added? A. Yes sir.

Q. 59. How is this fig juice in the bottle No. 2 used in soda water fountains?

A. It is drawn into the glasses before the customer designates the flavor that they wish the soda water to be, and is drawn into the glasses, and the soda water is drawn on top of the syrup.

Q. 60. Is it so in the same way that strawberry and other syrups are used there? A. Identically.

Q. 61. It is used for other flavoring purposes besides soda water? A. Yes, sir.

Q. 62. Now, please state what is the general custom in your establishment when manufacturing articles for different druggists to order?

A. Besides manufacturing a full line of pharmaceutical preparations such as physicians use, we manufacture anything else that the druggist may require in his business. He may want a cough remedy, he may want a blood purifier, he may want cathartic pills, he may want some patent toilet preparation, and, his facilities being limited, he comes to us and asks us to submit to him some formulas for his selection, or submits a formula to us, and we make him a price, then he designates a name that he would like to have that preparation called, and, if it is within the bounds of law, we manufacture it for him. If it is not, we decline always to put it up.

Q. 63. What name do you put on it then?

A. Whatever name he may select.

Q. 64. Then your name would not appear on that article at all?

A. Sometimes they prefer to have our name, while we would not prefer to use our name; we have, in some instances, used our name.

Q. 65. In other instances your name does not appear at all?

A. In the majority of instances our name does not appear.

Q. 66. But only the name of the druggist, or such name as the druggist may select for his own purposes?

A. May select; yes, sir.

Q. 67. In manufacturing and selling this laxative fig syrup which you have made since the decision in the Fred-

erick Stearns case have you sold it generally yourself, or made it to order?

A. We have made it upon the inquiry of our customers, and I presume my salesmen have offered it to them.

Q. 68. You have no drugstore of your own, have you?

A. Just a manufacturing plant.

Q. 69. Except the manufacturing establishment, I mean?

A. No, sir; we have a branch of our establishment in Los Angeles, where we carry our products.

Q. 70. You say you have a branch house in Los Angeles? A. Yes, sir.

Q. 71. Now, a package has been put in evidence here by complainant as complainant's exhibit "U." in the California Fig Syrup case, prepared by the Yetiva Drug Company of Louisville, Kentucky, and it is claimed that that is manufactured by your establishment. I will ask you what you know in regard to that, what you have to say?

A. I am told by my—

Q. (Mr. OLNEY.)—Just one moment. What you are told is not evidence.

The WITNESS.—You must understand that that is the only way I can tell you. I can't tell you all the details of my business. I have a large number of traveling men. It is not supposed that I should go and sell these things myself. I am told by my representatives that sell it—

Mr. OLNEY (interrupting).—I move to strike that out.

Mr. MILLER.—Then I suppose you don't want us to admit that you have made and sold it?

Mr. OLNEY.—You have already admitted that on the record.

Mr. MILLER.—We have not admitted anything of the kind.

Q. 72. Who, in your establishment, would know the facts in regard to this package?

A. By looking up the order sheet I could find out whether it came by mail or whether it came through an agent; if so, what agent sold it.

Q. 73. You don't know of your own knowledge, then, concerning this package? A. No, sir; I do not.

Q. 74. Would that testimony apply to these other packages here that have been put in evidence?

A. Yes, sir; it is reasonable to suppose that we did, because we did turn out such preparations.

Q. 75. Prior to the bringing of this suit, were you notified by the California Fig Syrup Company that they considered you were infringing upon their rights in any way, and to desist from it?

A. I think some number of months ago an attorney—I don't think it was Mr. Olney—wrote and said that he would like to see me at his office. I replied that I could not go to his office, but I would be pleased to see him at my office at any time that he would designate.

Q. 76. How long ago was that?

A. I should say about the time, or soon after this suit of Frederick Stearns, if my recollection serves me.

Q. 77. Soon after what?

A. The "Fig Syrup" case; the suit against Stearns.

Q. 78. Did you ever receive any formal notification from the California Fig Syrup Company in that respect?

A. No, sir; I never received one.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Do you remember receiving a letter from me notifying you that you must not manufacture or sell an imitation of complainant's medicine?

A. I do not. It may have been received at the office, but I don't remember any such letter.

X. Q. 2. You heard of the suit brought by the California Fig Syrup Company against the Improved Fig Syrup Company, did you not?

A. I heard of it; yes, sir.

X. Q. 3. You heard that that had been decided by the Circuit Court of Appeals of this circuit, too?

A. Not definitely. I didn't pay much attention to it.

X. Q. 4. What did you hear about it?

A. Very little; only that there was such a suit; I could not swear that the suit had ever been through the United States Court of Appeals.

X. Q. 5. But you knew that there was such a suit?

A. I knew that there was a suit brought by the California Fig Syrup Company against a man who had a retail store over out at Oakland. That and the Stearns suit were the only two that I ever knew anything about.

X. Q. 6. You knew that this suit that you speak of against this man who had a retail store over in Oakland was here in this circuit? A. Yes, sir.

X. Q. 7. Don't you know that as a matter of fact that decision, or the result of that decision, was published very generally in pharmaceutical journals?

A. I do not.

X. Q. 8. You never saw it? A. I never saw it.

X. Q. 9. It might have been published very generally without your knowing anything about it?

A. I could not have told if the suit had ever terminated. I knew the man was a very small druggist over there, and I didn't know what had become of it.

X. Q. 10. Now, you had declined orders, as I understand, before the decision in the Stearns case?

A. Before the Stearns case.

X. Q. 11. You declined for the reason that you did not suppose that you had a legal right?

A. I was not sure.

X. Q. 12. That was the reason you declined?

A. That was the reason I declined. I was not sure, and I was not in any position at that time to carry on litigation.

X. Q. 13. And you did decline whenever an order of that kind was given you until after you heard of the Stearns decision?

A. I did. I never put up a bottle—

X. Q. 14. (Interrupting.)—Then you made up your mind, did you not, that you would see if you could not reverse the decision here in California?

A. No, sir; I didn't do anything of the kind.

X. Q. 15. Didn't you have that in mind at that time?

A. No, sir; I was acting on the decision in the East.

X. Q. 16. But you knew there had been a decision here in California? A. I did not.

X. Q. 17. You knew there was such a suit. Did you make any inquiries as to the result of that suit?

A. I could not swear that that suit was before or at that time or since.

X. Q. 18. That is not the question. Did you make any inquiries as to the result of that suit?

A. No, sir.

X. Q. 19. Now, I understand you to say that those exhibits introduced here by the plaintiff, and mentioned in the bill of complaint were prepared by your establishment?

Mr. MILLER.—We object to that question because the witness was asked on direct examination and counsel objected to it on the ground that he did not know of his own knowledge. I withdrew the question, and stated that I would prove it by another witness.

Mr. OLNEY.—I will state on the record that that was not the question I asked of the witness.

X. Q. 20. Do you know whether or not these articles that are attached as exhibits to the complaint were manufactured by you or your concern upon orders given you by other parties, whether they were manufactured and put upon the market by you without any previous order having been received?

A. We never put any preparation of that kind on the market without first having received an order.

X. Q. 21. Did you have salesmen out receiving orders? A. A number of them.

X. Q. 22. Then, so far as these particular bottles that are in evidence here, you don't know whether they were ordered by the respective drugstores to whom you sold them without any previous solicitation on your part, or whether the order was solicited by your salesmen?

A. I do not. That can be determined, however, by reference to my books—determined whether they came by mail or whether they came through an agent. We have got down there two or three hundred files of orders. I can find any of them within a reasonable length of time.

X. Q. 23. Will you produce the orders under which you sold these articles that are attached to the exhibits already introduced in evidence?

A. With pleasure.

(Further hearing adjourned to Thursday, December 29, 1898, at 11 A. M.)

Friday, December 30, 1898, 10 A. M.

Counsel appearing:

For complainant, Warren Olney, Esq.

For respondents, John H. Miller, Esq., Purcell Rowe, Esq.

Examination in chief of

MATTHEW GARDINER, M. D., a witness called on behalf of respondents; sworn.

(By the EXAMINER.)

Q. 1. State your full name?

A. Matthew Gardiner.

Q. 2. What is your age, residence and occupation?

A. I am fifty-two years of age. I am a physician and surgeon by occupation.

Q. 3. What is your residence?

A. San Francisco.

(By Mr. MILLER.)

Q. 4. You are a practicing physician, I believe, doctor? A. Yes, sir.

Q. 5. How long have you been practicing your profession? A. Twenty-six years; a little over.

Q. 6. At what place or places?

A. In California nearly altogether.

Q. 7. Of what college are you graduated?

A. McGill University, Montreal.

Q. 8. What is your special line of practice now?

A. Well, for the last five years, or between four and five years, I have been chief surgeon for the Southern Pacific, Market Street Railway Companies.

Q. 9. As such, what are you called on to do in your profession?

A. Well, I have supervision of the entire medical department.

Q. 10. Have you physicians under you?

A. Yes, sir.

Q. 11. Quite a number of them?

A. In the neighborhood of one hundred or one hundred and fifty.

Q. 12. And you have general supervision over the whole matter, have you? A. Yes, sir.

Q. 13. Have you heard of the preparation known as the "Syrup of Figs"? A. I have.

Q. 14. In what connection have you heard of it?

A. Well, mostly from advertisements that I have seen on the bill-boards and in the papers.

Q. 15. Have you ever prescribed it to your patients in your practice? A. No, sir.

Q. 16. Do you know of any reputable physicians who have prescribed it?

A. Not of my own personal knowledge.

Q. 17. Would you prescribe it in your practice?

(Objected to as incompetent, irrelevant and immaterial.)

A. I would not.

Q. 18. You may state why?

A. Well, I look on "Syrup of Figs" as I do on a great many of those patent medicines, as a quack remedy. We don't know what they contain.

Q. 19. Do you regard it as a quack medicine?

A. I do.

Q. 20. What do you call quack medicines?

A. A preparation the contents of which is not known to either the physicians or the public.

Q. 21. Do you know of any popular impression that exists among people at large regarding the supposed laxative qualities of figs?

A. Well, figs, like a great many other fruits, as an article of diet, are looked on as a laxative.

Q. 22. Have you met with such belief or impression amongst the people, that is, the impression that figs are a laxative?

A. Well, the impression, I do not presume, is general. I have no doubt I have met numbers of people who

thought figs were a laxative, as it is claimed that even apples are laxative, or peaches. We all know that green apples are laxative sometimes.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. I suppose, doctor, that you would not prescribe any of these advertised remedies commonly called patent medicines? A. No, sir.

X. Q. 2. Suppose you knew what the ingredients of the medicines were, and were satisfied that it was a good medicine, would you then refuse to prescribe it because it was an advertised medicine?

A. It would depend entirely on the source of my information. If it was from the United States "Dispensatory" or the British "Pharmacopia" I would do it.

X. Q. 3. You would not prescribe it if it was not from any other source than those you have mentioned.

A. No, sir.

X. Q. 4. If you knew of your own knowledge that it contained no injurious ingredient, but did contain elements that would make it a good medicine for the purpose for which it was advertised, would you in that case refuse to prescribe it?

A. If you will allow me to ask the question, how would I obtain that knowledge?

X. Q. 5. I am asking you the question, if you knew?

A. Well, there is only one source, and that would be through an analytical chemist, and I am not that.

X. Q. 6. Assuming that you knew it. Now, answer the question.

(X. Q. 4 read.)

A. Yes, sir, I would.

X. Q. 7. Why?

A. I am quite as competent to compound my own medicines and to write out my formulas as anybody else.

X. Q. 8. Now, as I understand, the reason you call it a quack medicine is because its contents are not generally known to the public?

A. They are not generally known, as I understand it.

X. Q. 9. How is that?

A. I understand they are not known.

X. Q. 10. Yes, sir. Well, that is the reason you call it a quack medicine?

A. Yes, sir; the ingredients are uncertain.

Redirect Examination.

(By Mr. MILLER.)

R. Q. 1. It has never been made known to you as a medical man, has it, the contents?

A. Well, I have seen the formula, the supposed formula. I don't know whether it is correct or not. It was published in one or two medical journals, but I have forgotten it now.

R. Q. 2. It is not made known to the public generally?

A. Not that I am aware of.

R. Q. 3. But it is sold and advertised on the same basis as other quack medicines, is it?

A. I believe it is.

R. Q. 4. Have you ever been called on by any representative of the California Fig Syrup Company and had the contents of this medicine explained to you?

A. No, sir.

R. Q. 5. When you saw those advertisements in the medical journals, was publication made of anything else than of senna as its principal ingredient?

A. I don't remember the publication correctly, but it seems to me there were eight or ten ingredients.

R. Q. 6. You don't recollect them?

A. I do not; just at this moment I do not.

R. Q. 7. And that was in one of these medical journals?

A. Oh, I think in one of them the ingredients were published. I think one of them was jalop as a purgative, and something else. I have forgotten. But I think that was given as one of them.

R. Q. 8. Jalop, I understand you to say, is a purgative?

A. Yes; it depends upon the dose.

Examination in chief of

W. M. SEARBY (resumed).

(By Mr. MILLER.)

Q. 43. Mr. Searby, you have already given some testimony in this case? A. Yes, sir.

Q. I now hand you a formula for the preparation of "Fig Syrup," marked "Respondent's Exhibit No. 5," and I also hand you another formula, being respondent's exhibit No. 6 for the manufacture of "Fig Syrup," and ask

you to examine those two and state if you understand the same, and how to compound the preparation therefrom?

A. What is it you wish to know? (Question 43 read.) Yes, sir, I understand them; and, also, how to prepare them from these formulas.

Q. 44. Now, in your judgment as a chemist, you may state from which of those two formulas could the better preparation be compounded?

(Objected to as incompetent, irrelevant and immaterial, and not a question in issue in this case.)

A. One is much stronger than the other. I don't know that that makes much difference in the quality, but it makes a difference to the purchaser if he gets the same quantity for less money.

Q. 45. Which one is the stronger?

A. The one marked "Exhibit No. 6."

Q. 46. Now, in your judgment, as a chemist, would the preparation prepared according to formula No. 5 be any better than the preparation prepared according to formula number 6? A. I should say not.

Q. 47. How long have you been a chemist and pharmacist?

A. Oh, over forty-five years. I don't know just how long.

Q. 48. Then you have prepared a great many prescriptions, have you not? A. A great many thousands.

Q. 49. Is there anything you can discover in formula number 6 which would make it dangerous or deleterious or poisonous to a patient? A. What is the dose?

Q. 50 (By Mr. ROWE).—For an adult, one-half to one

teaspoonful; for a child, one-quarter to one-half a teaspoonful.

A. No, there is nothing in those doses, or dangerous.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. When you spoke of No. 6 being stronger, what is it that gives it that quality, that you say makes it stronger?

A. The increased amount of senna, which is the principal laxative and purgative ingredient in both formulas.

X. Q. 2. You say that there is no ingredient in No. 6 which would, in the prescribed doses, make it poisonous or dangerous? A. Yes.

X. Q. 3. What article is there in that formula that caused you to hesitate and inquire what the size of the dose was? A. Hyoscyamus.

X. Q. 4. What is the popular name for that?

A. Henbane.

X. Q. 5. Do chemists find that it makes a difference how a particular article is treated in making the compound or preparation in order to make it the most efficient? A. Yes; undoubtedly.

X. Q. 6. The method of treatment of an ingredient, the making up of a medical preparation is an important matter, is it not, in pharmacy? A. Yes.

X. Q. 7. Can you tell from either formula what is the method for treating senna?

A. That would be a matter of judgment or preference

with each pharmacist. Some prefer one process and some another.

X. Q. 8. Is it not possible to take the same formula for a medical preparation, using precisely the same ingredients, and by the different treatment of the ingredients in the process of compounding, make it essentially a different medicine?

A. Well, that is a very wide question. It depends. It depends a good deal on what is the menstrum used for resisting the drug.

X. Q. 9. The question was as to whether it was not possible by a different method of treatment to prepare a compound of the same ingredients and with the same proportions, that would have a different effect by using different methods of preparation?

A. You could not essentially change the nature of a finished product in either of these cases by varying the processes.

X. Q. 10. Now, in regard to the treatment of senna, would it not be possible to substantially vary the effect by treatment of the senna? That is to say, in the way that the medical quality is extracted from the article?

A. Not by use of either of these formulas. If you care to have an explanation, I will explain it more fully. If you wish to know what would take place.

X. Q. 11. Well, make your explanation.

A. Well, in one formula hot water is poured over the senna. That extracts the medicinal properties of the senna, and having once extracted it no ordinary method of treatment would injure it. In the other process the senna and hyoscyamus and figs are treated with weak

alcohol, not strong, weak alcohol, by the process called percolation and you could not materially change the character of the finished product by modifying the process. The process of percolation cannot be very greatly varied. In both cases the senna is exhausted of its medicinal qualities, one by hot water and the other by weak alcohol.

Examination in chief of

J. D. GRANT, a witness called on behalf of respondent;
sworn.

(By Mr. MILLER.)

Q. 1. What is your full name? A. J. B. Grant.

Q. 2. What is your business? A. Merchant.

Q. 3. With what firm are you connected?

A. Murphy, Grant & Co.

Q. 4. How long have you been in business in San Francisco? A. About twenty years.

Q. 5. What line of business is that of Murphy, Grant & Co.? A. Dry goods.

Q. 6. They never have anything to do, I presume, with medicines or drugs as a matter of sale, do they?

A. They do not.

Q. 7. Have you ever been engaged in the business of making or selling medical preparations of any kind?

A. I have not.

Q. 8. Have you any technical knowledge of that business? A. None whatever.

Q. 9. Have you any technical knowledge of chemistry in the matter of preparing prescriptions?

A. I have not.

Q. 10. You have never had anything to do with that style of business, have you? A. No.

Q. 11. Do you remember hearing of a preparation or medicine on the market called "Syrup of Figs"?

A. I have seen it advertised.

Q. 12. Have you ever used it? A. Never.

Q. 13. Now, when you saw the name "Syrup of Figs" in connection with that preparation, what did you suppose was the constituents or chief constituents?

(Objected to as incompetent, irrelevant and immaterial.)

A. I supposed it was made of figs in some way.

Q. 14. If you were to see a bottle labeled "syrup of Strawberry," what would you suppose it would contain?

A. I would suppose it was made of strawberries in some way.

Q. 15. If you saw a bottle labeled "Syrup of Raspberry," what would you suppose as to that?

A. I suppose it was made of raspberry.

Q. 16. And would you use the same process of reasoning if you saw a bottle labeled "Syrup of Figs"?

(Objected to as incompetent, irrelevant and immaterial.)

A. I would.

Q. 17. Have you ever heard amongst people or from any source that figs were laxative in their quality?

A. I have.

Q. 18. How long have you known of such an impression as that?

A. As long as I can remember.

Q. 19. It is quite a popular impression, is it not? It is a general impression? A. Yes, I think so.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Do you know yourself whether figs are laxative? A. I do not.

X. Q. 2. You have never tried it? A. Never.

X. Q. 3. Did you ever observe the label on the bottle of medicine of this preparation?

A. I never saw a bottle of this medicine.

X. Q. 4. You never saw that it was to be given in medicinal doses, that is a teaspoonful did you?

A. I say I never saw a bottle of the medicine.

X. Q. 5. And never saw what quantities it is to be given in? A. I know nothing about it whatsoever.

X. Q. 6. Would you suppose that if this material, this medicine was to be given in doses of half a tablespoonful, that it would be made from figs? That is, suppose you should see the statement made that this was a medical preparation to be given in doses of half a tablespoonful, would you still suppose that its principal ingredient was figs? A. I would.

Examination in chief of

A. CHESEBROUGH, a witness called on behalf of respondent; sworn.

(By Mr. MILLER.)

Q. 1. State what business you are in, Mr. Chesebrough.

A. I am a member of the firm of William Dimond & Co., shipping and commission merchants.

Q. 2. How long have you been a member of that firm?

A. Since its organization; 1881, I think.

Q. 3. Have you resided in San Francisco all that time?

A. I have been here since 1870 with the exception of eighteen months east.

Q. 4. In San Francisco?

A. Yes, sir; and on the Coast.

Q. 5. And the business of the firm, I understand is shipping, is it? A. Shipping and commission.

Q. 6. Have you ever been engaged in any business connected with the preparation or selling of drugs or medical compounds? A. No, sir.

Q. 7. You have no familiarity with that business, then, have you? A. No.

Q. 8. Have you any technical knowledge of chemistry and the preparation of medical compounds?

A. No, sir.

Q. 9. You never were engaged in that business?

A. No.

Q. 10. Have you ever seen or heard of any preparation on the market here called "Syrup of Figs"?

A. I have seen the posters on the fences and heard—perhaps I have heard persons talk about it.

Q. 11. Now, when you saw that name "Syrup of Figs," advertised in that way, what impression was conveyed on your mind as to the constituents or any of the constituents of the preparation?

(Objected to as incompetent, irrelevant, and immaterial and not pertinent to any issue in this case.)

A. Why, I could only take it as it read, that it was a preparation made from figs, syrup of figs.

Q. 12. That would be the natural supposition, would it not?

(The same objection.)

A. To me it would.

Q. 13. If you were to see a preparation labeled "Syrup of Strawberries," what conclusion would you come to as to the constituents of that preparation?

A. The same thing.

Q. 14. That is, that it was made from what?

A. The strawberry.

Q. 15. And would that same process of reasoning apply to any particular fruit that was so named?

A. It would in my opinion.

Q. 16. Have you ever used this "Syrup of Figs"?

A. No, sir; I have not. I have thought of using it, but I have never used it. I am very fond of figs and, consequently, have thought well of the syrup.

Mr. OLNEY.—I move to strike out the witness's answer as not pertinent to any proposition involved in this case.

Q. 17. (By Mr. MILLER).—Now, what was it, Mr. Chesebrough, that induced you to think of using it?

(Objected to as incompetent, irrelevant and immaterial. What induces a man to think of doing a certain thing cannot be evidence in a case against anybody.)

A. Shall I answer your question?

Q. 18. Yes; just answer it.

A. Because I am passionately fond of figs. There was very seldom a day that I don't have them, don't eat them.

Q. 19. And it was from that fondness of figs that you thought of using this medicine? A. Yes, sir.

Q. 20. Are you aware of the popular impression among people as to the laxative qualities of figs?

A. Well, I may say so far as I myself am concerned, I know it has that effect on me, in that way.

Q. 21. They have proved laxative in your case?

A. Yes, sir.

Q. 22. And you were always under that impression, that they possessed laxative qualities, were you?

A. Yes, sir; aside from the evidence that I gained by eating them.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Did you notice on these posters, or in the advertisements that the laxative quality of this medicine came from senna? A. No, sir.

X. Q. 2. You never saw that? A. No, sir.

X. Q. 3. Did you ever notice in what sized doses this preparation was to be taken?

A. No, sir. My only impression is seeing it largely advertised.

X. Q. 4. You have never given it any particular attention one way or the other? A. No.

(At this point Clinton E. Worden was recalled as a witness, but, by request of counsel for both parties, the testimony of Richard E. Queen is transcribed into the record preceding that of Clinton E. Worden.)

RICHARD E. QUEEN, recalled for further examination.

(By Mr. MILLER.)

X. Q. 1. Mr. Queen, I hand you a bottle of "Syrup of Figs," and ask you if that contains a preparation put up and sold by your company, the California Syrup of Fig Company?

A. I don't know. It looks like our bottle and label.

X. Q. 2. Has your company put up and sold a preparation in bottles and labels identically like that?

A. I think so. I think we did some years ago use that label and a bottle like this.

R. X. 3. Don't you know that you used it?

A. Yes; I know they used a label like this some years ago.

R. X. 4. And you used a bottle like this, did you not?

A. We did.

R. X. 5. The words, "California Fig Syrup Co.," are blown on the side of the bottle, are they not?

A. On the back of the bottle.

R. X. 6. That is the same style of label of the bottle you were using at the time that you brought suit against the Improved Fig Syrup Company, in this court, was it not? A. Yes, I think it was.

R. X. 7. What year was that suit brought in?

A. To the best of my recollection it was in 1893.

R. X. 8. And when was that suit terminated in the Court?

A. I think it was finally terminated in 1894, if I remember rightly.

R. X. 9. The bottle was taken in the case, was it not?

A. Yes.

R. X. 10. Do you remember when that suit was determined?

A. To the best of my recollection it was in 1894, although it may have been a little later.

R. X. 11. Now, you were using this style of label and bottle which I now hand you at the time of the termination of that case, were you? A. Yes.

R. X. 12. How long after the termination of that case did you use it?

A. I used this label until—well, I think I dropped this label with the end of the year 1894, or early in the year 1885.

Mr. MILLER.—I offer this bottle in evidence and ask that it be marked “Respondent’s Exhibit No. 12.”

(Marked “Respondent’s Exhibit No. 12.”)

R. X. 13. Have you one of the boxes or cartons in which these bottles were put up and sold by you at that time? A. I think we have.

R. X. 14. I have requested you some time ago to produce one of them. Have you produced it?

A. I have not, but I will do so before the case is closed, if I can find it.

Mr. OLNEY.—I don't remember that. If you did make such a request it is an oversight.

Mr. MILLER.—I did make the request two or three times and I will make it again.

R. X. 15. I ask you to produce a bottle with a label on it and the carton in which it comes contained as a wrapper, that were used by you or by your firm until after the termination of the case of the California Fig Syrup Company against the Improved Fig Syrup Company, and until you changed to your present form, as illustrated by Exhibit "A," and I also wish you would produce here for evidence the proximate amount of sales of this fig syrup sold by you up to the time that you changed to your present form of label, Exhibit "A." I think I also request you to produce here copies of those advertisements that you had put in the papers, other than those of a medical character, of your preparation, known as "Syrup of Figs." If you have produced any of those it does not appear in the records. Can you produce them? A. I can.

R. X. 16. Then I will request you to produce here at our next sitting the advertisement of your "Syrup of Figs" from the secular press, both before and after you changed to your present form of label, if you can. Can you do it? A. I will.

R. X. 17. I hand you a copy of the Reno Evening Gazette, published at Reno, Nevada, Saturday, November 19, 1898 and call your attention to an advertisement in there under the head of "Miscellaneous," entitled "Syrup of Figs," by the California Fig Syrup Company, and ask you if you recognize that advertisement—if it is the ad-

vertisement of the company and was put in by the order and authority of the company? A. It is.

R. X. 18. Is that a running advertisement for the paper?

A. Yes, that had been running so for some two or three months, I think, or perhaps longer.

R. X. 19. Has the same advertisement been published in other papers by your company? A. Yes.

R. X. 20. Can you mention some other papers in which it has been published?

A. It is difficult to be positive as to the names of papers, because we change advertisements frequently and sometimes run one advertisement in one paper and another advertisement in another. But I can produce other papers containing that advertisement.

R. X. 21. I don't care for new papers. I ask you, then, have you published that advertisement in a great many papers? A. We have.

R. X. 22. You have a very large advertising list, have you? A. We have.

R. X. 23. And have been advertising in different papers, various papers throughout different sections of the country? A. Yes, sir.

R. X. 24. And those advertisements are being published now? A. Yes.

R. X. 25. You are very large advertisers?

A. Yes, sir.

Mr. MILLER.—We offer that advertisement in evidence and ask that it be marked "Respondent's Exhibit No. 13"; and, instead of putting the whole paper in evi-

dence, I would suggest that it be cut out and put on a piece of paper.

(Marked "Respondent's Exhibit No. 13.")

I offer in evidence the printed copy of the transcript of the record in the case of the California Fig Syrup Co. v. Frederick Stearns & Co., in the Circuit Court of the United States for the Eastern District of Michigan on appeal to the Circuit Court of Appeals.

(Objected to as incompetent, irrelevant and immaterial, not evidence and not the best evidence.)

Mr. MILLER.—Well, now this copy is not certified; if you are going to insist on the last objection, I will send on and have it certified.

Mr. OLNEY.—I wish to save you that trouble and expense. I will consider the matter and let you know.

Mr. MILLER.—The volume which I offer is volume 1, of the transcript of the record of the United States Court of Appeals, Sixth Circuit, October Term, 1894, in the case entitled "The California Fig Syrup Company, appellant, vs. Frederick Stearns & Co., appellee," marked "Respondent's Exhibit No. 14A." That is all, Mr. Olney. I don't know of anything else now.

Redirect Examination of

CLINTON E. WORDEN.

(By Mr. MILLER.)

R. Q. 1. Now, Mr. Worden, have you brought your books here, from which you can show the sales by your firm during the years past of the article known as fig

juice, such as is shown in this bottle, marked "Respondent's Exhibit No. 1"? A. Yes, sir.

R. Q. 2. Now, will you please turn to some of those entries and read the whole entry, so that it can be copied into the record, giving the name of the purchaser and the date?

(Objected to as incompetent, irrelevant and immaterial, and, further, on the ground that it is not the best evidence.)

A. This book, called the "Prescription Book," shows exact copies of bills sent to our customers. On August 4, 1888, we sold C. M. Troppman of San Francisco—

R. Q. 3. (By Mr. OLNEY, interrupting).—Are you testifying now from your own knowledge, or are you reading from this book?

A. I am testifying from my own knowledge of the business that we have done.

R. Q. 4. Then you can testify without the use of this book?

A. I cannot, any more than any business man could who has a large number of customers and a large number of items to sell.

Mr. OLNEY.—Very well, now. I object to the witness giving testimony as to what he has done from the book. Introduce the book in evidence, if it is proper evidence at all.

The WITNESS.—These are the official records of Clinton E. Worden & Co. On August 4—

Mr. OLNEY (interrupting).—I object to the witness testifying from the books or refreshing his memory from the entries in the book. And, further, on the ground that

the books themselves are not the best evidence, but, if they were, the entries in the books should be introduced to speak for themselves and not be helped out by the testimony of the witness.

By Mr. MILLER.—I will say for the benefit of the counsel that the book will be left here for his inspection if there is any question as to his incorrectness.

R. Q. 5. Now, Mr. Worden, just proceed to read those entries from this book as they are shown.

A. The bill reads as follows: "6 lbs. of red fire, 1 lb. of yellow fire, 1 doz. chlorate of potash tablets, 1-12 doz. fruit juice, banana; 1-12 doz. fruit juice, prune; 1-12 doz. fruit juice, fig; 1-12 doz. fruit juice, green gage; 1-12 doz. fruit juice, nectarine; 1-12 doz. fruit, pear; 2 lbs compound extract, U. S. P. pills."

R. Q. 6. Did Clinton E. Worden & Co. sell that bill of goods at that time to that person? A. Yes, sir.

R. Q. 7. And that, you say, was as early as August 4, 1888?

A. Yes, sir. They were sold and paid for.

R. Q. 8. Now, show us another entry containing an item of fig juice.

A. A. S. Moss & Co., Chelalis, Washington Territory, 1892, May 23, 1892: " $\frac{1}{4}$ doz. pineapple juice, $\frac{1}{4}$ doz. raspberry juice, $\frac{1}{3}$ doz. strawberry juice, $\frac{1}{4}$ doz. blackberry juice, $\frac{1}{4}$ doz. blood orange juice, 1-12 doz. currant juice, 1-6 dozen quince juice, 1-12 doz. nectarine juice, 1-12 doz. grape juice, 1-12 pear juice, 1-12 doz. lemon juice, 1-12 doz. fig juice, 1 lb. soluble essence chocolate, 1 lb. soluble essence coffee."

R. Q. 9. Now, did you sell that bill of goods at that time to that firm?

A. Yes, sir; and the goods were paid for.

R. Q. 10. Now, show us another entry in your books containing records of the sale of fig juice.

A. On May 30, 1893, Smoot Drug Co., Provo, Utah: " $\frac{1}{2}$ doz. fruit juice, strawberry; $1\frac{1}{2}$ doz. fruit juice, lemon; $\frac{1}{3}$ doz. fruit juice, pineapple; 1-6 doz. fruit juice, fig, 1-6 doz. fruit juice, nectarine; 1-6 doz. fruit juice currant; 1-6 doz. fruit juice, pear; 1 lb. fruit color, red; 1 lb. essence sarsaparilla."

R. Q. 11. Did you sell that bill of goods to that firm at that time?

A. Yes, and the goods have been paid for.

R. Q. 12. Now, produce another item of a similar kind.

A. On August 25, 1894, to Gower, Fowler, Cal.: " $\frac{1}{4}$ doz. fruit juice, blood orange; $\frac{1}{4}$ doz. fruit juice, pineapple; $\frac{1}{4}$ doz. fruit juice, strawberry; 1-12 doz. fruit juice, fig." I want to call your attention to something that I have not noticed until now. I have replaced something that had been sold him before—the 1-12 doz. fruit juice pineapple; I will say that you will notice that these fruit juices are ordered in small quantities, with the exception of strawberry, raspberry and pineapple. That is because they deteriorate so rapidly after the packages are opened, and they are only purchased in small quantities.

R. Q. 13. Now, did you sell that bill of goods to that man at that time. [No answer.]

R. Q. 14. I noticed on a bill here after the words "Fruit juice, fig," is the words "to replace."

A. Yes, sir.

R. Q. 15. What does that mean?

A. It means to replace a sale that I had sold him before and which had spoiled.

R. Q. 16. Now, will you produce another item of this kind, if you have it?

A. I have nothing more here.

R. Q. 17. Since the date of this last item, 1894, that is to say, during the last four years, has your firm at any time sold these fruit juices? A. Yes, sir.

A. Yes, sir.

R. Q. 18. And have they sold the fig fruit juice?

A. Yes, sir.

R. Q. 19. Which one of these fruit juices is it that has the largest sale?

A. Strawberry, raspberry and pineapple.

R. Q. 20. They are the most popular?

A. They are the most used.

R. Q. 21. The others are more rare, are they, I presume? A. Yes, sir.

R. Q. 22. Now, a package has been offered in evidence marked complainant's exhibit "V," entitled "California Fig Syrup," and on the package is the statement "That it was prepared by the Yetiva Drug Company of Louisville, Kentucky." Now, I understand that the firm of Clinton E. Worden & Co. put up that preparation, did they? A. Yes, sir.

R. Q. 23. For whom did they put it up?

A. For Mr. E. Little.

R. Q. 24. Did you receive an order from E. Little?

A. Yes.

R. Q. 25. Just state what the facts were between your firm and E. Little regarding this matter, from beginning to end.

A. The order was placed with us through a representative named Mitchell.

R. Q. 26. (By Mr. OLNEY.)—A representative of whom?

A. A representative by the name of Mitchell. I can't give his initials now.

R. Q. 27. Whom did he represent?

A. He represented Clinton E. Worden & Co.

R. Q. 28. That is what I wanted to get at.

A. The order was placed in the laboratory and was filled and delivered, but not until some time after did the nature of the order become known to the principal.

R. Q. 29. (By Mr. MILLER.)—Now, what is this piece of pink paper, which I hand you, with some little pencil marks on it?

A. This is a rough sketch of the style of wrapper which Little desired us to get up for him.

R. Q. 30. Did that accompany the order for the stuff?

A. Yes; it accompanied the order for the stuff.

R. Q. 31. Where is the order?

A. This is the original order. (Producing.)

R. Q. 32. The one which you now produce?

A. Yes, sir; the original agent's order.

R. Q. 33. That is, this order turned in to your firm by the agent Mitchell, and this is the original order, is it?

A. The order as turned into the office.

(By Mr. MILLER.)—We offer this original order in evidence and ask that it be marked "Exhibit No. 7."

(Marked "Respondent's Exhibit No. 7.)

R. Q. 34. On this order I find the words "Send proof of label before running." Now, what label does that refer to?

A. It refers to the label that we got up from the instructions given.

R. Q. 35. Did you get up a label according to the instructions and according to the sample as shown on this pink paper which is to be offered in evidence?

A. Yes, sir.

(By Mr. MILLER.)—We offer this piece of pink paper containing the proposed label in evidence and ask that it be marked "Respondent's Exhibit No. 8."

(Marked "Respondent's Exhibit No. 8.)

R. Q. 36. Now, where is the label that you got up for Little in accordance with these instructions?

A. There is the wrapper, there is the label. (Showing.)

R. Q. 37. First you produce a wrapper similar in all respects to the wrapper contained in "Complainant's Exhibit V." A. Yes, sir.

(By Mr. MILLER.)—We offer that in evidence and ask that it be marked Exhibit No. 9.

(Marked "Respondent's Exhibit No. 9.")

R. Q. 38. Now, the small label which you produce here is what? A. The label that goes in the bottle.

(By Mr. MILLER.)—I offer that in evidence and ask that it be marked Respondent's Exhibit No. 10.

(Marked Respondent's Exhibit No. 10.)

R. Q. 39. Now, what is this paper that I hand you?

A. This is the laboratory and working order sheet. The original order sheets, whether coming from agents or through the mail, never go into the laboratory.

R. Q. 40. You mean the laboratory for this particular batch of stuff? A. Yes, sir.

Mr. MILLER.—We offer this in evidence and ask that it be marked “Exhibit No. 11.”

(Marked “Respondent’s Exhibit No. 11.”)

R. Q. 41. Now, how much of that stuff was prepared under that order, Mr. Worden? A. One gross.

R. Q. 42. Is that all? A. That is all.

R. Q. 43. What was done with it?

A. It was delivered to Mr. Little.

R. Q. 44. How much did you receive for it?

A. Sixteen dollars.

R. Q. 45. You never sold any of it to any other person, then? A. No, sir.

R. Q. 46. And as I understand you to say it was prepared according to the order given you by Little?

A. Yes, sir.

R. Q. 47. And under his direction?

A. Yes, sir.

R. Q. 48. Now, I understood you to say a moment ago that none of the members of the firm knew individually about the details of this order until after it was all finished? A. No, sir.

R. Q. 49. Is that correct?

A. That is correct; yes, sir.

R. Q. 50. Now, after the discovery that some stuff had been sent out of your place with a label on it containing the words “California Fig Syrup,” what did you do?

A. I reproved the bill clerk and order clerk severely for permitting any preparation with that title to be put up in our laboratory, as it was contrary to my instructions, and took every possible known means to prevent any more of it being so put up.

Mr. OLNEY.—I move to strike out the witness's answer on the ground that it is incompetent, irrelevant and immaterial and has no bearing upon this case.

R. Q. 51. (By Mr. MILLER.)—Now, what title do you refer to? “California Fig Syrup?” A. Yes, sir.

R. Q. 52. You claimed the right to make fig syrup, I understand, did you? A. Yes, sir.

R. Q. 53. But you did not desire to use the name “California Fig Syrup?” A. No, sir.

R. Q. 54. Those are the facts in regard to the matter, are they? A. Yes, sir.

R. Q. 55. Mr. Worden, will you produce a copy of that newspaper called the “New Era,” which you received containing a notice of the decision of the case of the California Fig Syrup Company vs. Frederick Stearns & Co., by virtue of which you testified you considered you had the right to use the name “Syrup of Figs?”

A. Yes, sir.

R. Q. 56. You have it with you now, have you?

A. I have not.

R. Q. 57. Will you produce it after the recess?

A. Yes, sir.

Recross Examination.

(By Mr. OLNEY.)

R. X. Q. 1. Do the books which you have produced in Court show all of the goods you have sold since 1888?

A. No, sir.

R. X. Q. 2. Do these books show all of the fig juice that you have sold during that time? A. No, sir.

R. X. Q. 3. Have you made a search for any further entries in your books? A. I have not.

R. X. Q. 4. Will you produce here at the next session or as soon as you can all of the entries of fig juice that you have sold?

A. It is impossible. I cannot. It would take possibly a month to go over the bills that we have, but I will be pleased to offer to you some, and if you wish I will do so.

R. X. Q. 5. Have you any index of these record books that you have introduced in evidence? Do they contain an index showing to whom the goods were sold?

A. The items?

R. X. Q. 6. No, the persons.

A. I don't know as I exactly understand you.

R. X. Q. 7. Do those books that you have produced here contain an index showing to whom you sold the goods? A. Yes, sir.

R. X. Q. 8. Now, how did you find these particular items in these books?

A. By taking the sales book and beginning at the first page and going down through.

R. X. Q. 9. Now, how many of these books have you?

A. I should judge one hundred or two hundred.

R. X. Q. 10. Will you state the page now upon which you have read the entries in each one of those books? Commencing with 1888?

A. That page is 337.

R. X. Q. 11. What is the date of the first entry in that book? A. May 2, 1888.

R. X. Q. 12. What is the date of the last entry?

A. September 29, 1888.

R. X. Q. 13. Now, will you take the next book?

A. Similar information?

R. X. Q. 14. Yes.

A. May 2, 1892. Let me explain. There are books intervening between these.

R. X. Q. 15. Now, will you give the page of the entry?

A. One hundred and twenty.

R. X. Q. 16. What is the last entry in the book?

A. June 30.

R. X. Q. 16. What year? A. The same year.

R. X. Q. 17. Now, take the next book. Give the date of the first entry, the page of the entry that you read in evidence, and the date of the last entry?

A. May, 1893; June 30, 1893.

R. X. Q. 18. You did not give the page, did you, the page of the entry?

A. The page of the entry, 22.

R. X. Q. 19. Take the next one.

A. July 2, 1894, entry on page 372. The last entry is August 31 of the same year.

R. X. Q. 20. Now, the next one.

A. That is all.

R. X. Q. 21. Who found these entries in these books for you?

A. I had them looked up by a clerk. After they were found, I looked them over myself.

R. X. Q. 22. What was the name of the clerk?

A. I can't tell you.

R. X. Q. 23. Did you give instructions to any particular clerk?

A. I did not. I gave general instructions to the office.

R. X. Q. 24. To whom did you give those instructions?

A. To my brother, W. W. Worden.

R. X. Q. 25. What were the instructions that you gave him?

A. To look up sales on fig juice, a few sales in different years.

R. X. Q. 26. Now, don't you know what clerk it was that did the work? A. I do not.

R. X. Q. 27. Can you find out? A. I can.

R. X. Q. 28. Will you produce him here without our subpoenaing him?

A. I will, with pleasure.

R. X. Q. 29. I give you notice, then, to bring that clerk here. This order from Little & Co., I understand, was delivered to the house by an agent of yourself, named Mitchell? A. Yes, sir.

R. X. Q. 30. You didn't know anything about it until after the order was filed? A. I did not.

R. X. Q. 31. So your testimony, then, is simply as to what you know from the order itself?

A. What I know from the order itself.

R. X. Q. 32. You know no other circumstance in connection with it of your own knowledge?

A. Except that the goods were delivered.

R. X. Q. 33. Do you remember that the goods were delivered?

A. I don't remember when they were delivered, but I know that they have been paid for.

R. X. Q. 34. Where is Mr. Mitchell?

A. I don't know. I don't think he is in this part of the country.

R. X. Q. 35. When was it that you reprovved the men in your employ for having filled that order?

A. I think about the time of the beginning of this suit.

R. X. Q. 36. In whose handwriting is the script on exhibit No. 7? A. In Mr. Mitchell's.

R. X. Q. 44. In whose handwriting is the script on exhibit No. 8. A. I don't know.

R. X. Q. 38. Where was the printing done on Exhibit No. 9? A. In our own printing office.

(At the hour of 12:30 P. M. a recess was had until 2 P. M., when the following proceedings were taken:)

Mr. ROWE.—It is admitted that Miss Lillie Burns, an employé in the laboratory of Clinton E. Wbrden & Co., was instructed to examine the records containing copies of bills of said company between the year 1888 and the middle of 1897, and that she found the bills which were introduced into the record as evidence at the morning session, showing a number of orders filled for fig juice and

other fruit juices. Is that correct, Mr. Olney? Is that sufficient.

Mr. OLNEY.—Yes. And that she examined about fifty books and found no other bills.

Mr. ROWE.—No other bills during that time. That she examined about fifty books and found no other bills during that period?

Examination of

CLINTON E. WORDEN (recalled).

The WITNESS.—You asked me this morning if there were any other bills. There are other bills for goods sold since the middle of 1897.

Mr. ROWE.—They have not been introduced in evidence.

Examination in chief of

WILLIAM PINNIGER, a witness called on behalf of complainant; sworn.

(By The EXAMINER.)

Q. 1. What is your full name?

A. William Pinniger.

Q. 2. What is your age, residence and occupation?

A. I am about fifty-three. My residence is Reno, Nevada.

Q. 3. What is your occupation?

A. By occupation, I am a pharmacist.

Q. 4. (By Mr. OLNEY.)—Did you ever study in any institution the business of pharmacy?

A. Yes, sir; somewhat.

Q. 5. Are you a graduate of any school of pharmacy?

A. The Pharmaceutical Society of Great Britian.

Q. 6. How long have you been in the business?

A. About forty years.

Q. 7. Where?

A. In various parts of England, New York and in Nevada.

Q. 8. When did you first go into business in Nevada?

A. On my own account, do I understand you?

Q. 9. Yes, sir.

A. I think it must be about 1877.

Q. 10. Have you been in business there ever since?

A. Nearly ever since, except a short period I was away, in London.

Q. 11. Are you acquainted with Mr. Queen?

A. I know him very well.

Q. 12. When did you become acquainted with him?

A. Probably about 1877, I think.

Q. 13. He was in business in Reno at that time, was he? A. Yes, sir.

Q. 14. Were you both in the same business?

A. Yes, sir; we were in partnership subsequently.

Q. 15. You were in partnership? Do you remember about the time that he first prepared a medicine which is known as "Fig Syrup" or "Syrup of Figs"?

A. Quite well.

Q. 16. Did you have anything to do with the manufacture of that medicine at any time afterward?

A. Yes, sir.

Q. 17. What time was it?

A. About 1879, I think this must have been.

Q. 18. Did you at any time manufacture the medicine yourself? A. I did.

Q. 19. When did you commence to do that?

A. As near as I can recollect it must have been in April—April or May, 1879.

Q. 20. Is there anything to fix the date in your memory?

A. Yes, Mr. Queen and myself were in business in separate stores prior to that time. We were both burned out in the great conflagration there in the early part of March of that year, and later on in the month we joined issues and opened a store together.

Q. 21. Well, now, is there anything in connection with that fire that causes you to remember about the manufacturing of this medicine? A. Quite well.

Q. 22. What was it?

A. Well, Mr. Queen lived in part of the town that was somewhat distant from the point of outbreak, and his friends managed to get him out of the flames, and to save a portion of his stock, which was not my case. Everything that I had was consumed. I hadn't a thread to my back. Well, among the articles saved was a percolator, a large percolator, containing a compound, which, of course, until I became initiated I didn't understand what it was, but which I subsequently found was a portion of the ingredients of "Syrup of Figs." And after we had gotten somewhat settled and had relieved the sufferings of those who were burned, etc., and could give some little attention to it, then we turned our attention to making this, which I subsequently learned was the first large

batch of "Syrup of Figs" that had been made. I think that Mr. Queen informed me that several experimental quantities had been prepared, but this was the first quantity of any importance that had been turned out.

Q. 23. Did you make any arrangements with him after that in regard to the manufacture of this article?

(By Mr. MILLER.)—The question is objected to as incompetent, irrelevant and immaterial because it occurred before the incorporation of the California Fig Syrup Company and was an arrangement with Mr. Queen individually, which is not at issue in this case.

A. Well, I proceeded to manufacture the syrup of figs from that time on.

Q. 24. (By Mr. OLNEY.)—Who was the party then from that time on that actually superintended the manufacture of the "Syrup of Figs"?

(The same objection.)

A. I was.

Q. 25. (By Mr. ROWE.)—What time was that? Was that in April, 1879?

A. Yes, sir; approximately, but at this time, I can't recollect the exact date.

Q. 30. (By Mr. OLNEY.)—You remember the fire?

A. Yes, sir.

Q. 31. When was that?

A. I think it was in March.

Q. 32. This was soon after the fire?

A. This was soon after the fire.

Q. 33. How long did you continue to manufacture?

A. I think to about the end of 1880.

Q. 34. Now, during that time, do you remember whether or not figs were uniformly used in the preparation, and if so, as to what quantities?

Mr. MILLER.—We object to that as incompetent, irrelevant and immaterial on the ground that it relates to medicine that was made before the California Fig Syrup Company was incorporated, and something with which we have nothing to do in this suit.

A. Yes, figs were used at that time by him.

Q. 35. To what extent? Do you remember?

(The same objection.)

A. The quantities I can't recollect at this date, but I know a quantity of figs were used on each occasion that I made the preparation.

Q. 36. On each occasion? A. Yes.

Q. 37. Did you ever make any of this medicine without using a certain proportion of figs?

(The same objection.)

A. No, sir.

Q. 38. Did you leave Reno at any time to go to London?

A. Yes, sir; at the end of December, I think it was, in 1880, I left Reno.

Q. 39. Then you manufactured up to the time you left Reno for England? A. Yes, sir.

Q. 40. Were you ever at any time interested in the California Fig Syrup Company? A. Yes sir.

Q. 42. What share of stock did you have in it?

A. I first bought—before the incorporation of the company I owned a one-fifth interest. Subsequent thereto I had twenty thousand shares.

Q. 43. There were one hundred thousand shares, were there?

A. There were one hundred thousand shares. Yes, sir.

Q. 44. Have you any interest in that company now?

A. No, sir.

Q. 45. Have you had any interest for several years past? A. No, not since 1882 or 1883.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. What became of your stock in the California Fig Syrup Company? A. It was sold to Mr. Queen.

X. Q. 2. Who sold it?

A. A friend of mine by the name of Bole, since deceased.

X. Q. 3. I thought the stock belonged to you?

A. Yes, sir. But you understand I was in London at that time. There was one of those unfortunate disagreements that creep up in companies, crept on this occasion, and while it was proposed by one faction to take my stock entirely by assessing it beyond what I was able to pay, another wanted to purchase it. And eventually, not being on the spot, I sent a power of attorney to Mr. Bole, telling him to act in the matter for me according to his own judgment. He elected to sell, and sold, for a small sum of money, to Mr. Queen.

X. Q. 4. How much did he sell for?

(Objected to as incompetent, irrelevant and immaterial.)

A. I can't recollect at this time.

X. Q. 5. About two hundred dollars or three hundred dollars?

A. Some small amount of money. I don't remember what it was.

X. Q. 6. An insignificant sum, was it?

A. A small sum of money.

X. Q. 7. It was under five hundred dollars, was it?

A. I think it was; yes, sir.

X. Q. 8. When you were manufacturing the medicine for Mr. Queen, what else did you put in it besides figs?

Mr. OLNEY.—I instruct you not to answer the question, Mr. Pinniger.

A. I think I must ask the protection of the Court in the matter.

Mr. OLNEY.—We object to the question as incompetent, irrelevant and immaterial. It is immaterial what was at that time a secret. The formula has been changed. It simply opens the door to proof of the new formula.

Mr. MILLER.—Well, it is impossible for me to go ahead with the examination until the witness answers that question. I can't proceed any further. The matter was brought on direct examination as to the manufacture of this medicine at that time, and one of these ingredients was stated. I am entitled to a thorough cross-examination, and I purpose to have it, and I cannot go any further until the witness answers the question.

Mr. OLNEY.—I make the further objection that it is not cross-examination.

The EXAMINER.—Gentlemen, all I can do is to certify the matter to the Court, if you request it.

Mr. MILLER.—I request that it be certified to the Court. We might as well have it out now as at any other time.

The EXAMINER.—Does the record show that the witness refuses to answer the questions?

The STENOGRAPHER.—It does not.

X. Q. 9. (By Mr. MILLER.)—Do you decline to answer the question, Mr. Pinniger?

A. I think it would not be quite right to do so.

X. Q. 10. Well, do you decline to do it? I don't care whether you think it is right or not. I simply want to get your decision.

Mr. MILLER.—Let me make a suggestion.

X. Q. 11. Have you any reason for declining except my instruction to you?

A. Simply that I think I ought not to expose my friend's formula; simply that.

X. Q. 12. Mr. MILLER.—Then I understand that you do decline to answer the question?

A. Well, I must decline to answer the question.

The EXAMINER.—Do you ask that it be certified to the Court?

Mr. MILLER.—I ask that it be certified to the Court.

The EXAMINER.—Do you wish it to be certified immediately, or wish it to be postponed?

Mr. MILLER.—You can do it at any time.

(Note by stenographer.—Pending the submission of this question to the Court, the taking of testimony was proceeded with as follows:)

Examination in chief of

C. J. BROOKINS, a witness called on behalf of complainant; sworn.

(By The EXAMINER.)

Q. 1. State your full name? A. C. J. Brookins.

Q. 2. What is your age, residence and occupation?

A. I am a merchant in Reno. I sell fruit, candy, cigars, books, stationery, pianos, organs; a general variety store.

Q. 3. (By Mr. OLNEY.)—How long have you been in business in Reno? In general merchandising?

A. About twenty-six or twenty-seven years.

Q. 4. Do you know Mr. Queen? A. Yes, sir.

Q. 5. Do you know the California Fig Syrup Company?

A. Yes, sir.

Q. 6. Do you remember about the time it was organized? A. Yes, sir.

Q. 7. Do you remember about its being organized?

A. Yes, sir.

Q. 8. Is it a part of your business to sell fruit to customers? A. Yes, sir.

Q. 9. Well, are you in the habit of selling figs?

A. Yes, sir.

Q. 10. Were you in the habit of selling figs to Mr. Queen, or to the California Fig Syrup Co?

A. Yes, sir.

Q. 11. Was there anything that called your special attention to the fact that they were buying the figs from you?

A. Yes, sir: they bought larger quantities than other people did. That was one thing. They used to buy a dollar's worth or more at a time. While other people usually bought ten cents' worth or two bits' worth at most.

Q. 12. Did that lead you to make inquiries?

A. Yes, sir.

Q. 13. What did you ask?

A. I asked what they done with so many figs. They said—

Mr. MILLER (interrupting).—We object to what he asked other people, and we object to what the other people told him, on the ground that it is incompetent, irrelevant and immaterial, and purely hearsay.

Q. 14. (By Mr. OLNEY.)—Well, what reply was made?

Mr. MILLER.—We make the further objection on the ground that it is not stated to whom this question was asked, or who made the reply.

Q. 15. (By Mr. OLNEY.)—What reply was made?

A. They said that they were manufacturing the medicine called the "Syrup of Figs."

Q. 16. Did they tell you what kind of medicine it was? (The same objection, and on the further ground that it is purely hearsay.)

A. They said it was a laxative.

Q. 17. Now, who was it you had this conversation with?

A. Well, I think it was Mr. Queen, and some other employés. This conversation was with Mr. Queen. He moved up just a few doors from me after the fire, and he used to come in down there and to buy these figs, and I

wanted to know what he done with so many of them, and he told me that he was manufacturing this medicine.

Mr. MILLER.—I make the further objection, since it has been found out that it was Mr. Queen who made these alleged statements of facts, and I move to strike out all the answer that has been given regarding what was said by Mr. Queen or anybody on his behalf, on the ground that he is a party in interest in this litigation, and his statements therefore are incompetent, irrelevant, and immaterial.

Q. 18. (By Mr. OLNEY.)—Do you remember Mr. Alt? So you know Mr. Alt?

A. Yes, I know him well.

Q. 19. Do you remember his manufacturing the medicine up at Glendale? A. Yes, sir.

Q. 20. Did you sell any figs to the company at that time?

A. Well, I really could not say as to that, I only know that a wagon drove up one day and got a large lot of figs, and I asked them also what they were going to do with it.

Mr. MILLER.—We object to anything that he asked of the wagon, as to what they were going to do with it, as the witness was proceeding to say, on the ground that it is incompetent, irrelevant, and immaterial.

Q. 21. (By Mr. OLNEY.)—To whom were you informed that these figs were to be delivered, if anybody?

Mr. MILLER.—We make the same objection, and also object on the ground that it is purely immaterial as to what he was informed.

A. The Syrup of Figs Company.

Q. 22. Do you know where the wagon came from?

A. I am quite sure it came from Glendale.

Mr. MILLER.—I move to strike out the answer on the ground that it is perfectly palpable that the witness is guessing at it, and that he has no knowledge of his own in the matter.

A. The knowledge I had was that the man who was driving the wagon I knew lived at Glendale. I knew he lived in Glendale.

Q. 23. (By Mr. OLNEY.)—Do you know whether or not he got supplies in Reno for Mr. Alt or the California Fig Syrup Co.?

A. I only know what he said.

Q. 24. You only know what he said?

A. That is all.

Q. 25. Now, can you fix the time?

Mr. MILLER.—The time of what?

A. The only way I can fix it, I know it was after the fire in 1879. The whole town burned up. It was after March—either the later part of March or later.

Q. 26. (By Mr. OLNEY.)—Do you also remember the fact that Mr. Alt was manufacturing the medicine up at Glendale?

A. Yes, sir; I made inquiries, and found out that he was manufacturing at Glendale.

Mr. MILLER.—I move to strike out the answer on the ground that it is purely hearsay as to what he found out.

Mr. OLNEY.—You can take the witness.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. When did you first hear of the name "Syrup of Figs?"

A. About 1879, or before that. Somewheres along there, I could not remember positively. Somewheres along there.

X. Q. 2. The name was known up in that country, was it? A. Yes, sir.

X. Q. 3. What did you suppose were the constitutents of the medicine, if anything, from hearing the name "Syrup of Figs?"

A. Well, I suppose that it was—I asked what it was. In fact, I bought some of the goods. I asked if it was made of pure fig juice or figs, and they said no; that it was a laxative, and I said "Is it good for me? I am constipated." They said it was just the thing. And I said "Is there anything in it that will gripe a person?" They showed me a bottle of it and I said, "I can't see any figs in this." And they said it was only the juice of the figs, and they said it was good for me, that there was nothing in it that would harm me; and I paid for it and took it.

X. Q. 4. When you heard the name "Syrup of Figs," what impression did that carry to your mind?

A. Well, it carried the impression that there must be figs in it, and then knowing that they bought figs of me, of course I thought there must be figs in it. I knew that it was not pure figs, because I was selling the figs myself and eating them myself, and if it was nothing but figs,

I could eat my own figs, I would not have to buy them.

X. Q. 5. You have often heard of the impression that figs are a laxative, have you not?

A. Well, to a certain extent; yes, sir. I have been told that figs were laxative to a certain extent, that is, the seeds of figs were; that they irritate the bowels more or less, and cause the bowels to empty. But I never thought there was any more of a laxative in them than in the apple or anything like that. If a person should eat a great many of them, they might be a laxative. I used to eat them. I am very fond of them.

X. Q. 6. Now, what year was it that you sold these figs to these people?

A. It was in 1879 or 1880; along there.

X. Q. 7. Was it in the same year as the fire?

A. It must have been in 1879. Yes, in the last of 1879. I am sure of that.

X. Q. 8. The fire, I understand, was about March, 1879? A. Yes.

X. Q. 9. It was after the fire, wasn't it?

A. After the fire. I remember it positively for this reason, that they moved up the second door to me, and being neighbors, we were anxious to have a little patronage, of course, and I noticed all the customers that came in and was anxious to get started again, having lost everything in the fire and naturally talked a little more than I generally do to people that buy of us under those circumstances.

X. Q. 10. And they were manufacturing the medicine then in Reno, just near your place, were they?

A. Well, I never went in to see them manufacture.

They told me—Mr. Queen told me he was manufacturing. I never went in the house to see it.

X. Q. 11. Well, you understood they were manufacturing at that time?

A. Yes, sir; I understood they were manufacturing to a small extent.

X. Q. 12. Up to what time did you sell him these figs?

A. Well, I can't tell you how long I sold them.

X. Q. 13. Well, about how long?

A. Oh, it must have been various times. I remember that.

X. Q. 14. Did you sell them to him during a year.

A. I think so.

X. Q. 15. How often did you sell them to him?

A. Possibly once a week, possibly twice. I could not remember that far back.

X. Q. 16. In what quantities did you sell them to him?

A. Well, usually they got a dollar's worth at a time.

X. Q. 17. Mr. Queen would come in and get them, would he? A. Yes, sir.

X. Q. 18. In what form were the figs?

A. We called them the California dried figs, the black fig.

X. Q. 19. The California black dried figs?

A. Yes, sir.

X. Q. 20. And he would come in and buy a dollar's worth, and you sold them to him?

A. Yes, sir.

X. Q. 21. And he would take them away with him?

A. Yes, sir; he always paid the money and took them with him; just the second door.

X. Q. 22. And all you know as to what he was going to do with them was what he told you?

A. Certainly, that is all. I didn't go in to see him make it.

X. Q. 23. Now, did you ever sell the fig to anybody else, except Mr. Queen?

A. Oh, yes, sir.

X. Q. 24. What other persons?

A. Well, I could not tell you. But lots of people bought ten cents' worth or five cents' worth.

X. Q. 25. No, I mean for the manufacture of this medicine.

A. Oh, well, I think I sold Mr. Pinniger figs once or twice.

X. Q. 26. Well, Mr. Pinniger and Mr. Queen were manufacturing the medicine together.

A. Oh, yes, sir; yes, sir.

X. Q. 27. Now, besides those two, did you sell any other person figs for that medicine?

A. Well, I am sure of those figs that I was telling you of that were bought by the man in the wagon. I am sure they were for that company.

X. Q. 28. Now, what year was that?

A. That was, I think, about 1880; 1879 or 1880, somewhere along there. It was after the fire, I know. That is all I can tell you.

X. Q. 29. You don't know how long after the fire?

A. I do not; no, sir.

X. Q. 30. And you sold those to the party in the wagon?

A. Yes, he said they were for a certain purpose.

X. Q. 31. Were those the last figs you sold to the company or to any body connected with the company?

A. Well, I don't think so.

X. Q. 32. Were they the last you sold?

A. I could not tell you.

X. Q. 33. Do you sell them any now?

A. Yes, sir; I have got them in stock to-day.

X. Q. 34. I mean do you sell any of those figs to the California Fig Syrup now?

A. Oh, not now. Their factory is not there any more.

X. Q. 35. When was the last you sold to them?

A. I could not tell you, sir.

X. Q. 36. Now, you don't remember the year when you sold those figs to the boy in the wagon, do you?

A. I believe it was after the fire.

X. Q. 37. The fire was in March, 1879; was it during that year?

A. Well, I think it was in the latter part of that year. I would not swear positively about that.

X. Q. 38. You remember that sale by reference to the fire, do you not? A. Yes, sir.

X. Q. 39. And you remember that it was after the fire?

A. Yes, that is my recollection.

X. Q. 40. Now, could it have been as much as a year after the fire, do you suppose?

A. I could not tell you.

X. Q. 41. What is your best judgment about it as near as you can get at it?

A. I think it was—I don't think it was a year, that is my judgment. It was less than a year.

X. Q. 42. You think it was less than a year?

A. Yes, sir; I do.

X. Q. 43. That is the last sale you have any definite recollection of for the use of figs in this medicine, is it?

A. Well, yes, I think that is the last one I remember; and I don't think I would have remembered that, for I don't pay any attention to anything I sell. People who buy, of course, pay for it, and I don't pay much attention to it. But I remember this on account of the fire more particularly in asking what they were for and what they were buying so many for, because they don't usually buy them that way.

X. Q. 44. How did you put those figs up that you sold to him? A. In a sack.

X. Q. 45. In a gunny-sack?

A. In a gunny-sack.

X. Q. 46. And he took the gunny-sack with the figs away? A. Yes, sir.

Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. Do you remember whether or not the California Fig Syrup Co. bought figs of you as long as it manufactured the medicine at Reno?

A. I am sure they did; I feel positive that they did; yes, sir.

R. Q. 2. Now, you are uncertain about the dates, as I understand you, that you sold these figs when it was being manufactured at Glendale. You are uncertain about the particular date?

A. How is it that I am uncertain about it?

R. Q. 3. I understand that you are uncertain about the date?

A. Yes, the particular date; I have never given it any thought.

R. Q. 4. Now, if it should turn out that Mr. Alt was manufacturing at Glendale some three years after the fire—

A. (Interrupting.)—Yes, I think it was as long ago as that, because I drove down there and was anxious to see the great “Syrup of Figs” factory, and talked about it, and went to see it.

R. Q. 5. You saw it there at Glendale?

A. Yes, sir; and I had quite an interest in it as I was doing business there and was talking some of buying stock, but I had no ready cash; I lost every nickel in the fire. Everything, I supposed, was insured, but it was not. The agent told me he had simply neglected to insure me and left me dead-broke.

R. Q. 6. But you do remember the fact that they were manufactured at Glendale and you went there?

(Objected to as leading.)

A. Yes.

Recross Examination.

(By Mr. MILLER.)

R. X. Q. 1. When you say you sold figs to the California Fig Syrup Co., do you mean to Mr. Queen and his people?

A. Yes, I mean his people, I mean the people that were working in the store at the time.

R. X. Q. Working in Mr. Queen’s store?

A. Yes, sir.

R. X. Q. 3. Where was his store at that time?

A. It was the second door below me.

R. X. Q. 4. Was it a drugstore? A. Yes, sir.

R. X. Q. 5. And that is what you mean by your statement of having sold to the California Fig Syrup Co., was it not? A. Yes, sir.

R. X. Q. 6. Mr. Queen was supposed to be the manager of that store, wasn't he? A. Yes, sir.

Examination of

CLINTON E. WORDEN (recalled).

(By Mr. MILLER.)

Q. 1. Mr. Worden, I hand you this paper or periodical entitled the "Pharmaceutical Era" of April 23, 1896, and call your attention to an article on page 530, entitled "Syrup of Figs Decision," and will ask you if this periodical is the one that contains the notice you referred to in your testimony heretofore when you said you did not commence to manufacture this syrup of figs under that name after you had seen this notice and this decision, and that you then considered that you had a right to manufacture it? A. Yes sir; it is the publication.

Q. 2. Are you a subscriber to this journal?

A. We are.

Q. 3. How often does it issue?

A. Once a month.

Q. 4. And is this the regular monthly issue for that month? A. Yes, sir.

Q. 5. What is the date? A. April 23, 1896.

Q. 6. Did you receive it during the month of April, 1896, or the early part of May? Either of them?

A. Yes, sir.

Q. 7. When you say that you read that decision in there, did you? A. Yes, sir.

Q. 8. Or the notice of the decision, did you?

A. Yes, sir.

Q. 9. What is the character of this journal?

A. It is a pharmaceutical journal of very great prominence throughout the country.

Q. 10. What is, in general, the class of subscribers to that journal?

A. The pharmacists who wish to keep in touch with matters—improvements in pharmacy and chemists—as well.

Q. 11. Does it circulate all over the United States?

A. It circulates all over the United States.

Q. 13. Where is it published?

A. New York City now; at that time I believe in Detroit.

Mr. MILLER.—We offer that in evidence.

(Marked "Complainant's Exhibit No. 15.")

Mr. OLNEY.—I will say here that it will be impossible to keep Mr. Pinniger there until next Wednesday, and if the Court should rule that this question must be answered I suppose that he will not be here for cross-examination, and I will have to allow the direct testimony to go out. But I want to give notice to the other side now that if they want to cross-examine him upon

any other matters, to do it at the present time, because he will not be here on Wednesday.

Examination of

WILLIAM PINNIGER, recalled for further cross-examination.

Mr. OLNEY.—We will withdraw our instructions to the witness Pinniger not to answer, and will make our objection to the question as incompetent, irrelevant, and immaterial, and not proper cross-examination.

X. Q. 13. (By Mr. MILLER.)—Will you now state what were the other ingredients of this syrup of figs as manufactured by you?

A. As near as I can remember them. Figs, senna, aromatics, sugar—I can't recollect them all, possibly.

X. Q. 14. Do you know what aromatics were used?

(Objected to as incompetent, irrelevant, and not proper cross-examination.)

A. I can't positively swear to the aromatics at this date.

X. Q. 15. You had a formula, did you not?

A. Yes, sir.

X. Q. 16. And you manufactured it according to your formula? A. Yes, sir.

X. Q. 17. Have you got that formula now?

A. No, that became the property of the company, you know. I did not preserve a copy myself. I am speaking from memory.

X. Q. 18. Do you remember now what the formula was?

A. No, I could not give you the proportions.

X. Q. 19. I will hand you a formula marked "Respondent's Exhibit No. 5," and ask you to read it over and see if that was not the formula according to which you manufactured the medicine?

(Objected to as not proper cross-examination, as incompetent, irrelevant, and immaterial.)

A. No, that is not the formula.

X. Q. 20. Do you remember what proportions of figs you put in the medicine?

A. Well, I could not possibly recollect it at this date, sir. You see, it is twenty years ago.

X. Q. 21. Well, if you can't remember, you can't. I am simply asking you if you can?

A. I can't recollect the quantity.

X. Q. 22. Can you remember the form in which you put them in the medicine?

A. Yes, I remember that distinctly.

X. Q. 23. How was that?

A. They were first of all cleansed and cut up and then digested with hot water.

X. Q. 24. What else was done to them?

A. They were pressed and then the sugar was added to the compound.

X. Q. 25. After going through the press that brought out a kind of juice, did it?

A. It brought out some of the extractable matter.

X. Q. 26. A kind of a thick or viscid syrup, was it?

A. Yes, sir.

X. Q. 27. That came from the fruit being dissolved by the hot water? A. Yes, sir.

X. Q. 28. And run through the press?

A. And run through the press, yes, sir.

X. Q. 29. Then you added sugar to it, did you?

A. Yes, sir; then I added sugar.

X. Q. 30. So that was practically fig juice you got after that extraction?

A. No, the fig extract, the extract of the figs. It was really a modification of the pharmaceutical process in making confection of senna, which has a world-wide reputation. All pharmacists know how it is prepared. And this was just simply a modification of that same thing as to the treatment of the prunes, figs, and tamarind used in that compound.

X. Q. 31. Now, after you got this extract of fig you then added sugar to it, I understand? A. Yes, sir.

X. Q. 32. That was put into the medicine?

A. Yes, sir; or rather the other portions were added to that, I think.

X. Q. 33. Now, how much of this fig extract did you put in the medicine? What proportion?

A. Well, really, my memory does not serve me on this case after twenty years, you know.

X. Q. 34. Did you have any definite proportion to put in.

A. Yes, sir; there was a regular formula at the time, but I have not got the formula. I have not seen the formula since that time, and I cannot state positively under oath what the quantities were.

X. Q. 35. You would not remember the formula now if you were to see it, would you?

A. I might recollect it if I was to see it, but the one you produce here is not the one I had then.

X. Q. 36. You don't recollect it now?

A. I don't recollect the proportions. I don't recollect the aromatics now. I don't recollect what aromatics were used in it.

X. Q. 37. What I am trying to get at is what proportion of fig extract you put into the medicine.

A. No, sir; I cannot recollect the quantity we used.

Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. You are acquainted with this confection of senna, I understand?

A. Yes, sir; for many years past.

R. Q. 2. You have been for many years?

A. Yes, sir.

R. Q. 3. What are the principal ingredients of confection of senna?

A. Well, senna is the most active; senna and the casia fistula.

R. Q. 4. But figs enter into the composition?

A. Yes, sir.

(Further hearing adjourned to January 6, 1899, at 10 A. M.)

Friday, January 6, 1899.

Counsel appearing:

For complainant, Warren Olney, Esq.

For respondents, John H. Miller, Esq., Purcell
Rowe, Esq.

Mr. OLNEY.—Here are the exhibits which were attached to the bill of complaint, which have been already formally offered in evidence, and I ask that they be marked by the commissioner to correspond with the marks upon them as attached to the bill of complaint. For instance, the one marked “Exhibit D” shall be marked in this case “Exhibit D.”

(Marked: “Complainant’s Exhibit D.”)

(Note by stenographer.—The several exhibits offered in evidence by him and were marked respectively as follows: “Complainant’s Exhibit E,” “Complainant’s Exhibit F,” “Complainant’s Exhibit G,” “Complainant’s Exhibit H.” “Complainant’s Exhibit A,” “Complainant’s Exhibit B.” “Complainant’s Exhibit I,” “Complainant’s Exhibit C,” “Complainant’s Exhibit C1,” “Complainant’s C2,” “Complainant’s Exhibit C3.”)

Redirect Examination of

WINSLOW ANDERSON, M. D. (resumed).

(By Mr. OLNEY.)

R. Q. 3. Dr. Anderson, in your opinion, is the complainant’s compound, the production known as “Syrup of Figs.” a quack medicine?

(Objected to as incompetent, irrelevant, and immaterial and responsive to no issue in this case.)

A. No, sir; I don’t consider it a quack medicine.

R. Q. 4. What is your opinion as to its qualities?

(The same objection, and on the further ground that it

is not a question for opinions, and, therefore, opinions are not proper, but only facts.)

A. It is a pleasant laxative.

R. Q. 5. What do you know in regard to its efficiency?
(The same objection.)

A. It is an efficient laxative.

R. Q. 6. What do you know in regard to its freedom from objectionable qualities?

(The same objection.)

A. I have never seen any objectionable results from its use.

R. Q. 7. Do you know whether it is free from griping qualities?

(The same objection.)

A. I have never known it to gripe in ordinary doses.

R. Q. 8. You have used it, as I understand you, in your direct testimony before, in your practice?

A. Yes, sir.

R. Q. 9. Have you used it personally?

A. Yes, sir.

R. Q. 10. Have you prescribed it to your patients?

A. Yes, sir.

R. Q. 11. What can you say as to whether or not it is a good laxative or a poor one?

Mr. MILLER.—We object to that as incompetent, irrelevant, and immaterial, on the ground that it is not a suit to test the quality of complainant's medicine, but only to test his right to the name of the medicine, and whether it be good, bad, or indifferent is not material; and we object decidedly to lumbering up the record with irrelevant and immaterial matter, and only increasing

the expense and cost of the trial and in lengthening it out in this indifferent manner.

Mr. OLNEY.—Counsel's objection is very extraordinary after having called witness after witness and filling many pages of the record to show that it is not a good medicine.

A. It is as good a general laxative as I know of.

R. Q. 12. What can you say as to the reason for its excellence?

Mr. MILLER.—We make the same objection; and furthermore, if the medicine is excellent it is utterly immaterial as to why it is excellent, the question being whether it is excellent or not. The testimony is argumentative.

A. I presume its ingredients and their method of preparation.

R. Q. 13. (By Mr. OLNEY.)—Does the method of preparation of a medicine have any effect upon the quality of the medicine?

A. It has a decided effect on the action of the medicine.

R. Q. 14. Suppose, Doctor, that two medicines, prepared by two different persons contain the same chemical ingredients, could the method of preparation adopted by these different parties have any material effect upon the qualities of the two medicines?

Mr. MILLER.—We object to that as incompetent, irrelevant, and immaterial, on the ground that this witness is not an expert pharmacist or chemist, never having been shown to have put up a prescription in his life, but is a practicing physician, his profession being entirely differ-

ent from that of the pharmacist, in compounding prescriptions.

A. I should say, yes.

R. Q. 15. (By Mr. OLNEY.)—I show you, doctor, a formula for the preparation of medicine, marked "Respondent's Exhibit No. 6," and call your attention to the ingredient of alcohol in that formula? A. Yes, sir.

R. Q. 16. In your opinion does that formula contain enough alcohol to be improper in a prescription or in medicine used by children?

Mr. MILLER.—We object to that as incompetent, irrelevant, and immaterial, on the ground that the witness is not shown to be an expert in the matter of preparing and putting up prescriptions, and is not shown to have put up one in his life, and I don't believe he has. If he is an expert in that matter, then it is proper first to show it.

A. As a rule we don't administer alcohol to children excepting for certain specific diseases. This practically makes an elixir of approximately twenty-five per cent of alcohol, roughly guessing, and as a rule, I do not administer elixirs containing alcohol—of course, to children—as a general practice.

R. Q. 17. (By Mr. OLNEY.)—Why?

A. Because, first, there is always a tendency to establish a habit; second, there would be some danger of irritating the intestinal canal by the continuous use of an elixir. Those are the objections to the use of elixirs for young children.

R. Q. 18. Do you observe that henbane is used in that formula?

A. Hyoscyamus, yes, sir.

R. Q. 19. In your opinion is henbane a proper ingredient to use in a medicine for children?

A. I would not use it in a laxative for children nor for delicate females. It is, however, used in laxatives for grown persons.

Recross Examination.

(By Mr. MILLER.)

R. X. 1. Your objection to using alcohol, then, is that you are afraid that it would create an appetite for drinking or create a liking for liquor, in the first place, and in the second place, that its continued use would irritate the intestinal canal. Is that what you mean by your testimony regarding the presence of alcohol in this medicine?

A. Yes, sir.

R. X. 2. You are really serious in that testimony, are you? A. Absolutely.

R. X. 3. Now, in regard to the use of henbane in there, are you not well aware that henbane is used in a great many laxatives, and that it is not considered to be bad practice by physicians of reputation when used in a proper quantity?

A. For adults laxatives are frequently combined with hyoscyamus. For children I would not use it.

R. X. 4. Do you not know that in some of the standard laxatives as laid down by the pharmacopia, some of which are in evidence in this case, that henbane is one of the constituents of those standard laxatives?

A. I believe that to be a fact.

R. X. 5. Now, do you know that this syrup of figs is considered by the great majority of practicing physicians in this city to be what is known as a quack medicine?

A. No, sir.

R. X. 6. Have you not heard of physicians considering it as a quack medicine? A. I can't say that I have.

R. X. 7. What do you call a quack medicine?

A. One whose advertisements are not received by the journal of the Medical Association. One whose ingredients are unknown to the medical profession.

R. X. 8. Yes. And when a medicine is put on the market whose ingredients are unknown, that is to say, the formula is unknown, then it is considered as a quack medicine?

A. It is considered an ethical proprietary medicine first, when received by the organ of our great association; second, when the ingredients are known, printed—an ethical proprietary preparation.

R. X. 9. The point I ask is this, and it is susceptible of an easy answer, because it is a matter that ought to be well known among medical men: is a quack medicine a medicine whose ingredients are not known to the profession, nor the formula by which it is made?

A. One whose ingredients are unknown I should consider a quack medicine.

R. X. 10. Now, will you tell me what the ingredients of this syrup of figs are?

A. The active principle, I believe, from using it, its therapeutic action is due to senna.

R. X. 11. Now, I didn't ask what the active principle was. I asked you for all of the ingredients of that medi-

cine, to wit, the formula, I will call it, by which it is made.

A. The formula I don't know. I know the ingredients in so far that I believe it is senna with aromatics and carminatives.

R. X. 12. Do you know all of the ingredients?

A. I do not.

R. X. 13. Do you know the proportions of any of the ingredients? A. I do not.

R. X. 14. Have you ever known them, or heard them?

A. I have not.

R. X. 15. Do you know it to be a fact that Mr. Queen keeps the matter as a secret, and that he has refused to disclose it in this case?

A. I didn't know that he had refused to disclose it. I don't know the actual component parts, grain for grain. That is what I can't testify to.

R. X. 16. Is it not a fact that none of the medical profession generally knows the constituent parts of that medicine?

A. They all know the published statement that it is senna with pleasant aromatics and carminatives.

R. X. 17. Can you tell from that medicine whether there is any hyoseyamus in it?

A. I have not analyzed it.

R. X. 18. Can you tell from its taste? A. No.

R. X. 19. Or its smell? A. No.

R. X. 20. Could you tell from any other way than by its analysis?

A. Yes, the therapeutic effects of henbane are well known.

R. X. 21. Now, is there any henbane in it?

A. I believe not.

R. X. 22. Inasmuch as you don't know the constituents of this medicine why is it that it is not placed by you in the category of a common, ordinary quack medicine?

A. For the same reason that phenacitine, antikamnia, bromidia, and many other known ethical proprietary preparations are considered ethical and used by the majority of physicians.

R. X. 23. Are you aware that certain of the prominent physicians in this city have testified in this case that this is known as a quack medicine? A. I am not.

R. X. 24. If they had, would that have any effect in weakening your position in regard to your opinion as to whether it was a quack medicine or not?

Mr. OLNEY.—We object to that. No such testimony has been given; therefore it is not a fair hypothesis to present to the witness.

Mr. MILLER.—I will state on the record that the testimony has been given, and the counsel's memory is exceedingly short, if he does not remember it.

Mr. OLNEY.—My memory is not short. My memory is accurate.

Mr. MILLER.—I withdraw the whole business. It is immaterial. I cannot waste time on such trifles as that.

R. X. 25. Look at his formula No. 5, doctor, respondent's exhibit No. 5, and state if you know what that is?

A. This would make a syrup with a small percentage of alcohol in it.

R. X. 26. What percentage of alcohol would it make?

A. About two to three per cent.

R. X. 27. Now, what kind of medicine would that make? A. A laxative therapeutically.

R. X. 28. Would you be able to tell from the medicine itself, after it was made, without any analysis, any of its constituents?

A. I think the taste of senna would be apparent here.

R. X. 29. Could you tell any other ingredient by the taste? A. Sugar.

R. X. 30. Any other?

A. Possibly the cinnamon or the cloves by the smell or taste, or the anise by the taste or smell.

R. X. 31. Could you tell the ginger?

A. I should think one would be able to tell the ginger by the taste. I am not sure about that.

R. X. 32. Then you could tell all the different ingredients, could you?

A. Well, that would be a little difficult without an analysis—for me, at least.

R. X. 33. Will you please take this bottle which is labeled respondent's exhibit No. 3 and taste the contents, and see if you can tell any of the ingredients of it?

A. I am not in very good tasting condition this morning, Mr. Miller. (Tastes.) Well, there is certainly some sugar in this, at any rate. There is a bitter principle that tastes something like senna. (The witness rubs a portion of the liquid in the palms of his hands, to get the odor.) I believe there is some peppermint in it. Further than that it is rather difficult to determine accurately without analysis.

R. X. 35. Could you tell whether there is any fig juice in it or not? A. I don't believe I could.

R. X. 36. Now, just take this other bottle, marked respondent's exhibit No. 4, and see if you can tell any difference between the two medicines?

A. You haven't got a little water here, have you? My taster is filled with No. one. (The witness rinses his mouth.) Well, that tastes very similar to what I have been using as "Syrup of Figs." The aromatics were so blended that it is exceedingly difficult to determine any one particularly. I believe I get a little peppermint and, possibly, a little ginger.

R. X. 37. Can you detect any substantial difference between the two samples that you have tasted?

A. Yes, the first is bitter; the second is not. The first is decidedly bitter. In this I believe the taste of senna is not nearly so bitter as in the other, in my judgment.

R. X. 38. Senna is bitter, then, is it?

A. Yes, sir.

R. X. 39. Then the bitter taste in the first one you judge comes from senna, do you?

A. I should think the first was senna.

R. X. 40. Would you think there was any senna in the last one—in the second one? A. I believe there is.

R. X. 41. More or less than in the first one?

A. From the taste one would think there was more in the first on account of its bitterness. It is a cathartic acid I believe, whatever the bitter principal extract is.

R. X. 42. Senna appears to be stronger in the first one than in the second one, then?

A. Yes, from the taste I would judge so.

R. X. 43. Then from the taste you would judge that the first one was stronger in senna than the other?

A. If that bitter principal be due to senna, one would say that the first one was stronger.

R. X. 44. Now, will you please look at this bottle, respondent's Exhibit No. 2, and state if you can tell what that is.

A. Well, this is undoubtedly a syrup, and has the flavor of figs, I believe. My hands are all covered with the other. I can't tell by the odor.

R. X. 45. You can detect the flavor of fig, can you?

A. I think so.

R. X. 46. There is no trouble about that at all?

A. No, sir.

R. X. 47. Can you detect anything besides the fig?

A. Syrup—sugar.

R. X. 48. I mean anything besides the sugar and the fig? A. I am not sure at this minute.

R. X. 49. Now, look at this other bottle, complainant's Exhibit No. 1, and state if you can determine what that is.

A. I believe that is a weaker syrup, a less sweet syrup, perhaps flavored with figs, and I think a small portion of alcohol.

R. X. 50. Do you detect the flavor of figs in there?

A. I think I do.

R. X. 51. It is very prominent, is it not?

A. Yes, I think so.

R. X. 52. What else do you detect in there besides figs?

A. I think I detect a small quantity of alcohol.

R. X. 53. You detect sugar, also, do you not?

A. Yes, sir.

R. X. 54. Then, as between the last two samples which are handed you, Exhibits Nos. 1 and 2, do you find any practical difference between the two so far as you can tell by the taste? and if so, what is it?

A. Which is the first one I had?

R. X. 55. The first one you had was number 2.

A. I believe that is the sweeter of the two, containing a little more sugar.

R. X. 56. Have you ever had any experience in practical pharmacy, such as preparing and compounding prescriptions? A. No, sir.

R. X. 57. I understand your experience has been only in the line of a practicing physician?

A. I have taught chemistry for a number of years in the University.

R. X. 58. Did you ever study pharmacy?

A. No, sir.

R. X. 59. You are not a graduate from any pharmaceutical school, then, are you? A. No, sir.

R. X. 60. Referring again to respondent's Exhibit No. 6, the formula, do you know what the alcohol is put into the preparation for?

A. To prevent fermentation; and for the purpose in general, outside of this preparation—I don't know why this was put in here, of course—alcohol is used as a solvent for the alcoloids, the extraction of organic drugs.

R. X. 61. I mean was it put in for the purpose of extracting the essential part of the drugs?

A. Yes; alcohol is used also to prevent fermentation.

R. X. 62. Now, is there any more alcohol in that formula than is necessary for those two purposes?

A. Without being scientifically accurate, I should say yes. I don't believe it is essential to have 25 per cent of alcohol to prevent fermentation.

R. X. 63. You stated that the object of the alcohol was, first, to extract the essential principles from the drugs; and, second, to prevent fermentation of the medicine. Now, I ask you, is there any more alcohol than is necessary in that medicine for those purposes?

A. I should say yes, with this reservation, that I would have to look into the matter scientifically; in other words, I would not be positive on that point. But I am of the opinion that there is more there than is essential for those purposes.

R. X. 64. That simply arises from a superficial observation and examination of the matter that you have given it on the witness stand?

A. Yes, sir; principally that.

R. X. 65. You would not undertake to be accurate or exact? A. No, sir.

R. X. 66. That is a scientific matter that could be decided, is it not? A. It is so.

R. X. 67. Alcohol is one of the expensive products, is it not? A. It is.

R. X. 68. It would be a little absurd, then, if a first class firm would use more alcohol in a medicine than was necessary for the purposes intended, would it not?

A. That would be extravagance.

R. X. 69. As well as a bad practice, would it not?

A. Yes, sir.

R. X. 70. Are you the editor of a medical journal here?

A. Yes, sir.

R. X. 71. Which journal is that?

A. The "Pacific Medical Journal."

R. X. 72. Is that the medical journal in which the Syrup of Figs Company advertises its medicine?

A. It is.

R. X. 73. They have a whole page there, have they not? A. They have.

R. X. 74. How long have they been running that advertisement there? A. Six or eight years, I think.

R. X. 75. Then they are one of the old advertisers and patrons and supporters of this "Pacific Medical Journal"? A. Yes, sir.

R. X. 76. Is there any other editor of this journal?

A. Yes, sir.

R. X. 77. Who else?

A. Dr. W. F. Southard is managing editor and Dr. D. A. Hodghead is associate editor.

R. X. 78. That is Dr. Hodghead who has already testified in this case on behalf of complainant, is he not?

A. I have not heard him testify. I have seen him here in the room.

R. X. 79. Were you not here when Dr. Hodghead testified in this case? A. No, sir.

R. X. 80. Where is Dr. Hodghead's office?

A. 1220 Sutter.

R. X. 81. And where is your office?

A. 1220 Sutter.

R. X. 82. Where is the office of Dr. Southard?

A. 1220 Sutter street.

R. X. 83. And where is the office of Dr. McNutt?

A. 1220 Sutter street.

R. X. 84. And where is the office of Dr. Woodward?

A. 1220 Sutter street.

Mr. MILLER.—Yes, I thought so.

Redirect Examination of

WINSLOW ANDERSON, M. D.

(By Mr. OLNEY.)

R. Q. 1. Do you have charge of the advertisements in the "Pacific Medical Journal"? A. Yes, sir.

R. Q. 2. Have the respondents here, Clinton E. Worden & Co., advertised in that journal?

A. For many years.

R. Q. 3. Do they have a full-page advertisement?

A. They do.

R. Q. 4. I understand you to say that you understood the ingredients of the complainant's preparation, "Syrup of Figs," from the statements that had been made, and, also, from your use of it, from the therapeutic effects as you observed them? A. Yes, sir.

R. Q. 5. Are you able, doctor, from such use as you have made of it, and observation of its effect, to come to a substantially correct knowledge of the ingredients of such a medicine as the complainant's?

A. I think so.

R. Q. 6. Can any physician in good practice do the same thing? A. I should think so.

R. Q. 7. Referring to the formula, Exhibit No. 5, where you said there was about two per cent of alcohol, I ask

you if there was more alcohol in that preparation than is necessary to prevent fermentation?

A. I should say not more.

Recross-Examination.

(By Mr. MILLER.)

R. X. 1. Is it not a fact that medical journals of first-class standing very frequently publish advertisements of quack medicines for which they are paid just as for other advertisements?

A. First-class journals do not.

R. X. 2. I show you complainant's exhibit "O," and ask you to look at page 14 of the advertisements and state if that is not the advertisement of a quack medicine?

A. No, sir.

R. X. 3. What is it?

A. A recognized ethical proprietary preparation used extensively by everybody.

R. X. 4. What is the name? A. Trional.

R. X. 5. Does the advertisement show what the constituents are?

A. It does not; but it is known to be a derivative of the coal tar products.

R. X. 6. Now, look at the advertisement on page 13, a medicine called pincoline, and state what that is.

A. That is understood to be an oil of tar prepared with vaseline as a base.

R. X. 7. Does that advertisement state what the constituents are?

A. I think not. Their literature, however, does. Yes, it says here: "An ethereal extract of the needles of the pine, *pinus punileo*," &c.

R. X. 8. Now, I show you another one, the cover of the page entitled "Glycozone," and ask you what that is?

A. Yes, sir.

R. X. 9. What is that?

A. That is a preparation of $H^2 O^2$.

R. X. 10. What is that used for?

A. An intestinal antiseptic; gargles; mouth washes.

R. X. 11. Does this advertisement state what its constituents are?

A. I think not, but their literature does.

R. X. 12. Now, in these advertisements which I have shown you so far, do any of them state what the constituents are? A. No, sir.

R. X. 13. Now, I show you another on page 15, entitled "Sanmetto," and ask you if you know what that is?

A. Yes, that is a pleasant preparation of sandal wood oil.

R. X. 14. Does this advertisement state what the constituents are?

A. "The scientific blending of true sandal and saw palmet to."

R. X. 15. So that this last one which I showed you does state what it is made of, does it? A. Yes, sir.

R. X. 16. Whereas the others did not?

A. Yes, sir.

R. X. 17. Now, I show you another, a medical journal here, marked complainant's exhibit N, "Humanity and Health."

A. We do not consider that as a medical journal.

R. X. 18. What do you consider it, then?

A. As a popular quasi-scientific journal. It is not a medical journal in the true sense of the word.

R. X. 19. Is that such a journal as you would expect to find advertisements of quack medicines in?

A. Yes. I can understand that quack remedies might be introduced into such journals, with others.

R. X. 20. I show you an advertisement on the cover of this journal, entitled, "The Electropoise, by the Electro-libration Company of New York," and ask you if you consider that to be in the line of a quack remedy?

A. Yes, sir; I should say that was in the line of an advertisement that would not be accepted by the journal of the American Medical Association.

R. X. 21. Is it not a fact this electropoise is generally known to people at large to be a quack remedy and a fraud?

A. It is simply a mild electric battery, scientifically, and its claims, of course, are not borne out by the facts.

R. X. 22. It claims to cure a great number of diseases, does it not? A. Yes, sir.

R. X. 23. As a medical man you know perfectly well that it will not perform those cures, do you not?

A. Yes, sir.

R. X. 24. Therefore, it is purely a quack remedy, is it not? A. Yes, sir.

R. X. 25. In what light do you consider a journal called "The Trained Nurse and Hospital Review"?

A. As a popular journal for nurses; not a medical journal.

R. X. 26. That would come in the same line as the

journal which I just handed you a moment ago, entitled "Humanity and Health," would it? A. Yes, sir.

R. X. 27. Those journals are supposed to advertise almost any kind of a medical remedy that they can get an advertisement for, are they not? A. Yes, sir.

R. X. 28. More in the nature of a business paper than of a medical journal, is it not?

A. An advertising medium; yes, sir.

R. X. 29. In fact, they are principally advertising mediums, are they not, and the reading matter is subsidiary to it? A. Frequently issued by manufacturers.

R. X. 30. Now, in what light do you consider "The Dietetic and Hygienic Gazette and Medical Journal," marked as "Complainant's Exhibit M"? I will hand it to you.

A. I consider that a legitimate journal. I am quite familiar with it.

R. X. 31. That is a medical journal, is it?

A. It is.

R. X. 32. That is on a different line from the other two that I handed you, is it? A. Yes, sir.

R. X. 33. Is the book marked "Complainant's Exhibit K," called "The Annals of Hygiene, a Journal of Health," a legitimate medical journal, or an advertising medium?

A. No; that is a legitimate medical journal.

R. X. 34. How is it with regard to the "American Analyst," marked "Complainant's Exhibit Q"?

A. I don't know it.

R. X. 35. You don't know anything about that?

A. No, sir.

R. X. 36. Now, here is another one, marked "Jenness Miller's Monthly." Is that a legitimate medical journal?

A. No, sir; that is a popular journal.

R. X. 37. Well, that is an advertising medium, is it not? A. Well, on those lines I should say.

R. X. 38. Here is another one, entitled "Food," marked "Complainant's Exhibit L." Is that a legitimate medical journal? A. Yes, sir.

Redirect Examination.

(Mr. OLNEY.)

R. Q. 1. Doctor, you have used the expression "ethical" in relation to journals and advertisements and prescriptions received as advertisements. A. Yes sir.

R. Q. 2. What do you mean by that term "ethical"?

A. As to advertising, there is a council composed of prominent members of the American Medical Association to whom all advertising matter must go before it is accepted by their organ, the "Journal of the American Medical Association." When this committee passes on an ad. and allows it to be printed in this journal—

R. Q. 3. (Interrupting.) An ad., did you say?

A. An ad.; an advertisement; and permits it to be printed in their organ which represents the American Medical profession in this country, such advertisements are considered ethical by the medical profession.

R. Q. And the advertisements of the California Syrup of Figs, the advertisement of the California Fig Syrup Company, in advertising its medicine, are considered ethical, as I understand it?

A. Yes, they are accepted by this board as such.

R. Q. 5. Now, what is the rule in regard to physicians in regular standing prescribing medicines that are advertised in this medical journal? Are they at liberty to do it?

A. Yes, sir; otherwise they would not be advertised in that journal.

R. Q. 6. But a physician is not deemed to have done an unprofessional act when he prescribed a remedy advertised in this medical journal?

A. Certainly not. It is placed there for the use of the American medical profession.

R. Q. 7. Now, is it not a fact, doctor, that there are many preparations now made, proprietary preparations, that are made, can be made and are made, cheaper and better in large quantities, and for that reason physicians prescribe them in their practice? A. Yes, sir.

R. Q. 8. Referring to the griping quality of senna, I will ask you if the griping quality can be extracted from the senna itself, would it not be better than to overcome the griping quality of senna by putting in the preparation other articles? A. I should say undoubtedly.

Examination in chief of

GERALD J. FITZGIBBON, M. D., a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your name?

A. Gerald J. Fitzgibbon.

Q. 2. What is your profession?

A. Physician and surgeon.

Q. 3. Where do you live? A. San Francisco.

Q. 4. How long have you practiced your profession in San Francisco? A. Since 1878.

Q. 5. Are you a graduate of any medical school or college? A. Yes, sir.

Q. 6. Where?

A. The Medical College of the Pacific.

Q. 7. Any other?

A. Well, I have a diploma from the Cooper, too.

Q. 8. Do you occupy any official position at the present time? A. Yes, sir.

Q. 9. What it is?

A. Well, I am a member of the Board of Health.

Q. 10. How long have you been a member of the Board of Health?

A. Since three years and a half; about three years and a half.

Q. 11. Are you acquainted with a medicine known as "Syrup of Figs," put up by the California Fig Syrup Company? A. Yes, sir.

Q. 12. How long have you known that medicine?

A. For a good many years.

Q. 13. Do you know whether or not it is prescribed by physicians in good standing in their practice?

A. Yes, sir.

Q. 14. Do you prescribe it yourself?

A. Yes, I do not write the prescriptions, but I prescribe it.

Q. 15. Do you know from actual observation and experience what its action is? A. Yes, sir.

Q. 16. Is it or is it not a good medicine?

A. Yes, sir.

Q. 17. How does it compare with any other laxatives that you know of on the market?

A. I don't know. I like its action because it is mild, pleasant and agreeable for children to take; that is all.

Q. 18. Have you heard anything in regard to its principal ingredients? A. Yes, sir.

Q. 19. How? A. By Mr. Queen some years ago.

Q. 20. Can you tell from your taste of it and your observation of it what the essential ingredients are?

A. I can't tell from the taste. I think it is senna.

Q. 21. Can you tell from its therapeutic effects what the principal ingredients are?

A. I can tell from its therapeutic effects, but I can't tell what is in the bottle by tasting. It takes a wise man to tell what is in a bottle by tasting.

Q. 22. If a man can do it he is a pretty wise man?

A. Yes, sir.

Q. 23. And a good chemist? A. Yes, sir.

Q. 24. You have observed the effects of this medicine?

A. Yes, sir.

Q. 25. And from observation are you able to state what the essential ingredients are, or what they must be?

A. Yes, sir.

Q. 26. I show you respondent's exhibit No. 6 and call your attention to the ingredient there of alcohol. Please look over exhibit No. 6 and state whether or not in your

opinion that is a proper remedy to be administered to children? And if so, state why it is, or if it is not, why it is not.

A. Well, about the remedy, the only objections to a remedy of that kind without a doctor's prescription would be the hyoscyamus, in my opinion. Of course, in giving this "Syrup of Figs" I tell my patients, if they will simply ask me "What will I give the child for a physic"? I say "You can give 'Syrup of Figs.' It is a pleasant and agreeable as anything I know of, and it is harmless." Of course, this other may be harmless, but hyoscyamus in some cases is dangerous. It depends entirely upon the individual. But if I were to give a prescription of hyoscyamus I would be careful in regard to the person to whom I was to give it.

Q. 27. I call your attention to the amount of alcohol there and ask you if in your opinion there is more alcohol than should be used.

A. Well, I don't know. I am not posted. I am not a druggist. I don't know anything about the proportion. But a little alcohol does no harm. The principal objection I have there is the promiscuous use of hyoscyamus.

Q. 28. Have you had the complainant's remedy, the syrup of figs, in your family? A. Yes, sir.

Q. 29. Do you know whether it gripes or not?

A. It does not; no.

Q. 30. It does not gripe? A. No, sir.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. When you say that it does not gripe I presume you mean that it does not, or that it has not done so in cases that came under your immediate observation?

A. I have not heard any complaints in regard to its griping. That is the reason I order it. Sometimes I am asked for a family remedy, a physic, and I say "Syrup of Figs' is pleasant and agreeable and it does not gripe." Of course, it may gripe in some cases. If it does I don't know anything of it.

X. Q. 2. It is a fact that medicine will act differently on different people sometime, is it? A. Yes, sir.

X. Q. 3. It is not impossible, then, that this medicine might have had a griping effect on people in other situations than those on whom it was under your practice?

A. It is not impossible; no.

X. Q. 4. Now, in what way have you prescribed this when you did prescribe it? A. "Syrup of Figs"?

X. Q. 5. Yes, sir.

A. Well, I would tell people to take a dose of "Syrup of Figs."

X. Q. 6. You never wrote out a prescription for it, did you? A. No, sir.

X. Q. 7. Why didn't you write out a prescription for it, doctor? A regular doctor's prescription?

A. Well, because I don't think it is necessary to write out a prescription to tell a person to take a dose of "Syrup of Figs" or to take a dose of black draft or a

bottle of citrate of magnesia or compound licorice powder. I don't write a prescription for castor oil and I don't write a prescription for Garfield tea, nor Hamburg tea, or anything of that kind. I tell them to get it.

X. Q. 8. If you came to a person and found him sick would you not write out a prescription for castor oil?

A. It is not necessary. I would tell the nurse to give it.

X. Q. 9. You mean to say that there are some medicines that you simply tell people to go and get instead of writing out a prescription and keeping a record of it?

A. Yes, sir; it is not necessary to write out a prescription in many cases. If a man tells me he is in need of something of the kind I tell him to take a dose of castor oil.

X. Q. 10. If you had to send to a druggist for it wouldn't you write out a prescription?

A. No, sir; I would tell them to send up castor oil or a bottle of citrate of magnesia or whatever was necessary.

X. Q. 11. Suppose there was no nurse there?

A. Well, there is always somebody to take care of a man when he is very sick. If a person is very sick there is always someone there. And if a man is able to get around, surely he can go and get a dose of castor oil without my giving him a prescription.

X. Q. 12. I am not limiting you to that medicine alone. I am asking you why it is that you, as a physician, would prescribe for people in that way. Do you do it in cases generally?

A. Yes, for physics.

X. Q. 13. When did you first hear of this "Syrup of Figs"?

A. Oh, it is a good many years ago. I don't remember how long ago. It is some years ago; ten or twelve years ago, or more.

X. Q. 14. In what connection?

A. Well, I have got youngsters and sometimes it is hard to get them to take physics, and a druggist told me, in the neighborhood, to give them some "Syrup of Figs."

X. Q. 15. Was that the first time you had used it?

A. Yes, and now I keep a bottle of "Syrup of Figs" in the house. I have kept it in the house ever since.

X. Q. 16. You got a bottle then on the recommendation of the druggist? A. Yes, sir.

X. Q. 17. You hadn't heard of it before that, had you?

A. Well, I don't remember whether I had or not.

X. Q. 18. When the druggist recommended it to you that way, of course, you didn't know what its ingredients were, did you?

A. Yes, asked the druggist what it was, and he said that the principal ingredients were senna and aromatics and carminatives.

X. Q. 19. You say the druggist told you what the ingredients were, did you? A. Yes, sir.

X. Q. 20. Why was it necessary to ask him what the ingredients were when you saw the name "Syrup of Figs" on the package?

A. Well, a man likes to know what he is giving.

X. Q. 21. Did you suppose you were giving them figs?

A. No, I thought it was flavored with syrup of figs.

X. Q. 22. What do you mean by saying that you supposed it was flavored with syrup of figs?

A. Well, I thought the syrup might be made from figs.

X. Q. 23. So as to give it a fig flavor?

A. Yes, sir; a flavor of the syrup. That the syrup might be made from figs.

X. Q. 24. You thought that something of that kind was in it? A. Yes, sir.

X. Q. 25. Did you ask the druggist what the actual ingredients were? A. I did at that time.

X. Q. 26. Now, when was it that Mr. Queen told you what the actual ingredients were?

A. Oh, it may be five or six years ago.

X. Q. 27. How did he come to do that?

A. I asked him what was in that "Syrup of Figs," and he told me then. Of course, I didn't ask him the exact proportions. He told me, I remember, that the principal ingredients were senna and aromatics and carminatives.

X. Q. 28. What was the occasion of your asking him?

A. Well, I have known Mr. Queen for some little time, and, when I saw him, naturally the subject of this "Syrup of Figs" came up and I asked him at that time what was in it. And then another time I appeared as a witness and I wanted to know what was in it before I came on the witness stand.

X. Q. 29. And you asked him? A. Yes, sir.

X. Q. 30. How long have you been friendly with Mr. Queen?

A. I don't know; for four or five or six years.

X. Q. 31. When was it you came to ask him about this "Syrup of Figs" or product? How long ago?

A. I don't remember; three or four years ago.

X. Q. 32. What was the occasion of it?

A. There was a case in Court, something like this trial.

X. Q. 33. Something like a lawsuit?

A. I think so; yes, sir.

X. Q. 34. He wanted you to testify, did he?

A. Yes.

X. Q. 35. And you wanted to know, of course, what the ingredients were, did you? A. Yes, sir.

X. Q. 36. Did you ask him what the ingredients were?

A. Yes, and he told me.

X. Q. 37. You wanted to know at that time, did you?

A. Yes, I asked him what was in this "Syrup of Figs." I told him that I wanted to know, as I was going on as a witness, and he told me.

X. Q. 38. Did you ask him how it was that he came to call this "Syrup of Figs" when you knew that figs would not do what he claimed?

A. I did not, because I was not interested.

X. Q. 39. Now, didn't it strike you that that was rather peculiar?

A. No, sir; because there are lots of things called by different names from what they really are. We have had samples of raspberry syrup in our department, and no raspberry in it.

X. Q. 40. Well, that would be a case of practicing a fraud, wouldn't it? A. That was, yes.

X. Q. 41. Because they labeled it raspberry syrup when there was no raspberry in it? A. Yes.

X. Q. 42. When was that?

A. Oh, that is some little time ago.

X. Q. 43. Where was it and how did it happen?

A. That happened with some samples of raspberry syrup that we got.

X. Q. 44. What was that? Something that came under the observation of the Board of Health?

A. Yes, sir.

X. Q. 45. Some one was selling stuff and labeling it raspberry syrup, were they? A. Yes, sir.

X. Q. 46. You found, however, that it had no raspberry in it? What did you do about it?

A. I forget exactly what was done. I only bring it up as an instance.

X. Q. 47. What do they generally do in such cases as that? A. They condemn it, of course.

X. Q. 48. They destroy it when they find that it has no raspberry in it? A. Yes, sir.

X. Q. 49. Notwithstanding the fact that it was being sold as raspberry syrup? Is that the fact?

A. Yes.

X. Q. 50. Now, when Mr. Queen told you that the active constituents of his medicine were senna and carminatives and aromatics, did he tell you all of the constituents? A. He did at that time; yes, sir.

X. Q. 51. What were they? A. I forget.

X. Q. 52. He didn't write them down for you, did he?

A. No, sir; I didn't ask him for it

X. Q. 53. And you don't remember what they were?

A. No, sir; I do not.

X. Q. 54. Can you remember any of them?

A. I remember that he said that the active principle in it was senna, and that is what all of these remedies depend upon, as their active principle—that is, the majority.

X. Q. 55. The laxatives?

A. The majority of proprietary remedies, such as "Castoria," Hamburg tea, Garfield tea and "Syrup of Figs." Of course, we have to take the manufacturers' word. We are not all chemists.

X. Q. 56. What else do you remember was in it?

A. That is all I remember.

X. Q. 57. You know what confection of senna is, do you not? A. Yes, sir.

X. Q. 58. There is very little difference between this "Syrup of Figs" and confection of senna, isn't there?

A. I don't know that. I think confection of senna will gripe under ordinary circumstances.

X. Q. 59. What is put into this medicine to prevent griping?

A. I suppose the aromatics and carminatives, and possibly ginger or peppermint or something of that kind. I don't know. You can't prove anything by me by tasting. I am not a very good hand at tasting.

X. Q. 60. I hand you this bottle, exhibit No. 3, and ask you if you can tell by tasting what it is?

A. No, sir. For instance, I can write a prescription and the principal ingredient may be quinine and I may

put in several other things, and it will be impossible to tell that there is any quinine in it. And I may, of course, get a bottle that tastes a little of a certain ingredient and there may not be any of that ingredient in that bottle. It is impossible, in my opinion, to tell what is in a bottle by tasting.

X. Q. 61. Certainly you couldn't tell any more than the most prominent characteristics, could you?

A. No, I don't think so.

X. Q. 62. As for telling the constituents that enter into it in very small proportions, it would be impossible to do that, would it?

A. That is my opinion; yes, sir.

X. Q. 63. Well, I ask you to look at this bottle No. 1 and see if you can tell what it consists of?

A. That is by tasting? I don't think so.

X. Q. 64. You can try; taste it and see.

A. (After tasting.) Well, there is a flavor of senna, as far as I can tell.

X. Q. 65. Now, try this one. (Handing witness another bottle.)

A. After tasting one, you get the same taste in the whole.

X. Q. 66. Try this one, exhibit No. 2, and see if you can tell what that is by tasting.

A. That is very sweet; no bitter taste to that.

X. Q. 67. What flavor does it have?

A. It tastes like syrup to me.

X. Q. 68. It has a syrup flavor? See if you can tell by tasting.

A. I can't tell. This bottle that I tasted first has a slight bitter taste.

X. Q. 69. You are not much of a taster then, are you?

A. No, sir.

X. Q. 70. Where is your office now, doctor?

A. 21 Powell.

X. Q. 71. You are still a member of the Board of Health, are you?

A. Yes, sir; and for a while yet, I guess.

X. Q. 72. Your term is about expired now?

A. Yes. I am not in this, I want you to understand, in my official capacity. That has nothing to do with this. I am not here as a witness on that account.

Redirect Examination of

RICHARD E. QUEEN.

(By Mr. OLNEY.)

R. Q. 1. You know Mr. Alt, Mr. Queen?

A. I do.

R. Q. 2. Did you ever at any time give him a written formula for a prescription of "Syrup of Figs"?

(Objected to as incompetent, irrelevant and immaterial, because Mr. Alt never testified to anything of the kind.)

A. I did not.

R. Q. 3. Did you ever at any time give him any formula in any way for the manufacture of a medicine that left out figs in the preparation? A. I did not.

R. Q. 4. Did you at any time receive any information that Mr. Alt in the manufacture of "Syrup of Figs" at his

office in Glendale had omitted to use figs in the preparation?

(Same objection.)

A. That is, after I had been excluded by the management, by the stockholders.

R. Q. 5. You learned that for the first time then, did you? That he had omitted to use figs in the preparation?

A. Yes, I saw then for the first time the original of this formula which is presented here.

R. Q. 6. Then, as I understand you, that was after the trouble had commenced between you and Mr. Alt, and the other stockholders? A. It was.

R. Q. 7. Litigation was in progress between you?

A. Yes, sir. And I also saw the same formula or a similar one after the secretary who was removed from his office at the same time that Mr. Alt was removed from the presidency and turned over the books and formula to the new secretary of the company.

R. Q. 8. Did you ever at any time tell Mr. Alt to keep figs on exhibition? A. No, I did not.

R. Q. 9. Did you ever make any such statement in regard to the use of figs as he testified to here.

A. I never at any time instructed him to exhibit or to use any figs to deceive the public. I told him to use figs in making the preparation. I showed him the figs and turned over a sack to him at the same time I turned over to him the other materials. After having taught him how to make the remedy I turned over to him the figs which I had on hand, as I had the other materials. I showed him how to make the remedy, and told him that the figs

did not give strength to the medicine, that they were used because they were pleasant to taste, and helped to make a pleasant combination.

R. Q. 10. Did you ever dictate a formula which he or anybody else took down in writing?

A. No, I did not.

Recross Examination.

(By Mr. MILLER.)

R. X. Q. 1. Have you produced the things which I requested you to produce at the prior examination?

A. I have here the old style paper box which was in use at the time of the Stearns suit; you also asked for some advertisements which I have brought.

R. X. Q. 2. Is this carton which you now produce a sample of the ones used by you up to the time of the termination of litigation in the East against Stearns & Putnam? A. Yes, sir.

Mr. MILLER.—We offer this carton in evidence, and ask that it be marked “Respondent’s Exhibit No. 16.”

R. X. Q. 3. Now, you have also produced an advertisement, printed in German, French and Spanish, have you not? A. Yes, the inside bottle wrapper.

R. X. Q. 4. How long did you use these as the inside bottle wrapper?

A. That was in use until July, 1896.

R. X. Q. 5. By the way, I will ask you how long was this carton in use, exhibit No. 16. Up to what time?

A. Up to July, 1896.

R. X. Q. 6. That was the date at which you changed the carton and the bottle wrapper? A. It was.

R. X. Q. 6. Now, you also changed the bottle label, at the same time?

A. No, I changed the bottle label about two years before.

R. X. Q. 7. But at this last time mentioned you changed the carton and the bottle wrapper?

A. Yes, sir.

Mr. MILLER.—I offer this in evidence, and ask that it be marked respondent's exhibit No. 17.

(Marked "Respondent's Exhibit No. 17.")

R. X. Q. 8. Now, have you produced any advertisements from newspapers which I requested you to produce? A. I have. (Produces.)

R. X. Q. 9. These advertisements are not the ones I requested because they are advertisements that were published in 1898. What I requested was the advertisements that you had published prior to July, 1896, or the time when you changed it to this present form of carton. Have you go any of these?

A. I think I have them all in evidence here substantially. This one was in use, I would state, prior to that time.

(Referring to the last produced.)

R. X. Q. 10. This one that you now produce was in use, was it, prior to July, 1896?

A. Yes, this has been in use for six or eight years past.

Mr. MILLER.—We offer this one in evidence, and ask that it be marked "Respondent's Exhibit No. 18."

(Marked "Respondent's Exhibit No. 18.")

R. X. Q. 11. You have no other of these advertisements here now, have you? A. I have not.

Mr. MILLER.—In regard to Exhibit “G,” we admit that this package was prepared and put up by Clinton E. Worden & Co. for a drugstore known as the Ariel Pharmacy, and was put up on the order of said drugstore, and according to the order that was given by said drugstore as on the label contained thereon, and in preparing the same that Clinton E. Worden followed the instructions of said druggist.

Mr. OLNEY.—I will not take the admission.

Recross Examination of

CLINTON E. WORDEN.

(By Mr. OLNEY.)

R. X. Q. 1. Mr. Worden, I will ask you whether the defendant, Clinton E. Worden & Co., put up and sold complainant’s Exhibits “D,” “E,” “F,” “G,” “H,” and “I?”

A. I am not able to state.

R. X. Q. 2. Did Clinton E. Worden & Co. put up a medicine like, and enclose it in packages like this, marked like those marked Exhibits “D,” “E,” “F,” “G,” “H,” and “I,” or any of them? A. Yes, similar.

R. X. Q. 3. But you are unable to state with reference to the identity of these particular packages?

A. Yes, sir.

R. X. Q. 4. But you did put up and sell packages like these? A. Yes, sir.

Redirect Examination.

(By Mr. MILLER.)

R. Q. 1. Just state what were the actual circumstances under which you put up packages similar to that, how you came to do it?

A. We are manufacturers for the druggists, putting up for them everything that is legitimate and within the bounds of law. We have the requirements and facilities for printing and manufacturing that they could not have in a retail store. They come to us and ask us to get them up cough remedies, or a blood purifier, or ague remedy, or a laxative, and in a great many cases have their own formula. In some instances, they ask us to submit formulas; they then advise us as to the style of packages, reading matter, the title and imprint or the name at the bottom of the package on the front. We then submit them prices that their order can be undertaken at, and, if satisfactory, get up the printed matter, submit the printed matter and fill their order.

R. Q. 2. Was that the course followed in regard to these various exhibits, or medicine like these various exhibits that are offered in evidence here?

A. Up to the time of the decision in the Stearns suit, I very carefully avoided putting up a preparation called "Syrup of Figs," desiring to be on the correct legal side, although I had many inquiries, all orders were declined. After the decision, customers came to us and said that the United States Court of Appeals had rendered a decision favorable to Stearns and adversely to the Syrup of

Figs Co., and demanding us to put up for them, at the same time threatening to fill the order with other houses who would put it up for them, if we did not.

R. Q. 3. Now, here is a bottle label, Exhibit "D," which, according to the testimony of the complainant here, was bought from the drugstore known as the Hayes Street Pharmacy, in this city and county; I will ask you whether or not the proprietors, or some one on behalf of the Hayes Street Pharmacy, instructed you as to the kind of label to use, and especially with regard to the name "San Diego Fig Syrup Co."?

A. The San Diego Fig Syrup Co.? Yes, we simply filled the order.

R. Q. 4. Did you know who the San Diego Fig Syrup Co. was? A. No, sir.

R. Q. 5. You knew nothing about it? A. No.

R. Q. 6. You simply filled the instructions of this drugstore? A. Yes.

R. Q. 7. Now, here is a package marked "Exhibit E," which complainant testifies was bought at the Fairmont Pharmacy in this city and county; would the testimony which you have just given in regard to Exhibit "D" apply to this Exhibit "E" with the change of name of the drugstore?

A. It would, sir. We have so many orders that it is impossible for me to swear that they put up this package, but we do that kind of business and we had put up packages of "Syrup of Figs" in that way.

R. Q. 8. And, when you put them up for these drugstores on order, then you put them up according to their

instruction in the way in which they call for them, do you? A. Yes, sir.

R. Q. 9. Does that testimony apply to the name that is found on this package, "Fig Syrup Company"?

A. Yes.

R. Q. 10. Did you know who the Fig Syrup Company was? A. I did not.

R. Q. 11. Now, here is another package marked "Exhibit G." which complainant testified was bought of the Ariel Pharmacy, in this city and county. What have you to say in regard to it?

A. The same testimony applies to that.

R. Q. 12. It is labeled "New York Fig Syrup Company." Did you know who the New York Fig Syrup Company was? A. I did not.

R. Q. 13. Was that the name you were ordered to put on it by this Ariel Pharmacy?

A. That was the instruction.

R. Q. 14. Here is another one marked "Exhibit E." I believe you have already testified concerning that one.

A. Yes, sir.

R. Q. 15. Now, here is produced another one marked "Exhibit H." What have you to say in regard to that?

A. The same testimony applies to that as to the former, that we followed the instructions of our customers in the printing matter.

R. Q. 16. Now, is all the "Syrup of Figs" which is put up in these bottles on these orders made according to this formula, respondent's Exhibit No. 6, which has been offered in evidence here? A. Yes.

R. Q. 17. What is the object of putting in this formula the ingredient alcohol?

A. As a preservative and for the purpose of making a menstruum sufficient to extract the full qualities of the drugs used in the formula. If a preparation does not have sufficient alcohol pharmaceutically proportioned, it will ferment and blow up, the bottles break and soil the druggists' shelves, counters and other goods.

R. Q. 18. Now, do you put into the medicine any more alcohol than is necessary for this purpose?

A. No, sir.

R. Q. 19. Is alcohol an expensive ingredient?

A. It is.

R. Q. 20. How does it compare with the other ingredients as to expense?

A. It is the most expensive part of the formula.

R. Q. 21. It is not likely that you would put any more alcohol in than was necessary, if it is the most expensive of all these ingredients, is it? A. No, sir.

Recross Examination.

(Mr. OLNEY.)

R. X. Q. 1. Mr. Worden, do you remember having received such an order as you have mentioned from the Hayes Street Pharmacy?

A. From memory, I do not, but my books show that such an order was filled and the goods delivered and paid for.

R. X. Q. 2. Your books are not here in Court, are they?

A. No, sir.

R. X. Q. 3. Have you examined your books in regard to this particular item?

A. I have for all of the exhibits as submitted. I suppose they are the same.

R. X. Q. 4. Could you ascertain whether or not you have sold these goods, from your books?

A. Yes, sir.

R. X. Q. 5. Now, you had traveling agents out soliciting orders for this medicine, did you not, and you so testified?

A. Not exactly. I have salesmen who solicit such orders for many thousand preparations that a drugstore may require.

R. X. Q. 6. But this article is included among the articles that they are instructed to solicit for?

A. Not now; but up to the time this injunction was granted our agents were instructed to receive orders for "Syrup of Figs," but no special effort was made in that direction.

R. X. Q. 7. You had manufactured an article and it was in stock at the time you made these sales, I suppose?

A. We had manufactured a bottle we had not labeled or wrapped, because we could not intelligently label and wrap until the order was received.

R. X. Q. 8. Did you put up any medicine of this character which you labeled and wrapped before you received any orders?

A. No, sir; no, sir. We have hundreds of preparations and none of them do we label and wrap and carry in stock, of that character of preparation.

R. X. Q. 9. Did you authorize, or did to your knowledge any of your solicitors say to these druggists that they had the right to sell "Syrup of Figs"?

A. Not that I remember.

R. X. Q. 10. Didn't you instruct your solicitors to make that statement to druggists?

A. I have no positive recollection, but it is very apt to have been the case that after the decision of the Stearns case I did. It is very apt to be the case. It is reasonable to suppose that I told my representatives that the case had been decided in the higher courts, and that if our customers wanted this preparation, they could accept the orders.

R. X. Q. 11. Did you tell them to inform the druggists of that fact?

A. I have no recollection of any such instruction.

R. X. Q. 12. You are unable to tell whether you did or not, then?

A. I am inclined to think that I did not. This preparation is only a matter of very minor importance to me.

R. X. Q. 13. Did you ever give the codefendants in this action to understand that you would defend this suit yourself? A. No.

R. X. Q. 14. Did you ever say anything of that kind?

A. I have not met Mr. Queen for years.

R. X. Q. 15. No, no, but these codefendants, these drugstores who bought of you; have you any arrangement by which you defend for them?

A. No, sir; no, sir.

R. X. Q. 16. Did you ever tell them that you would defend the suit? A. No, sir.

R. X. Q. 17. As a matter of fact, who is defending this action? A. Well, I think I am.

R. X. Q. 19. And you alone? A. Yes, sir.

R. X. Q. 20. But, isn't there such an understanding between you and the other defendants?

A. No, sir.

R. X. Q. 21. There is not? A. No, sir.

Mr. OLNEY.—Counsel for complainant makes no objection to the fact that Exhibit No. 14 A and Exhibit No 14 B are not certified to, but we object to their introduction on the ground that they are incompetent, irrelevant, and immaterial and have no connection whatever with this case.

(By stipulation between the respective parties, the reading and signing of the depositions by the several witnesses in this case are waived.)

Further hearing continued subject to notice.

Wednesday, February 8, 1899, 2 P. M.

Counsel appearing:

For complainant, Warren Olney, Esq.

For respondents, John H. Miller, Esq., Purcell
Rowe, Esq.

Examination in chief of

J. A. BRIGHT, a witness called on behalf of complainant; sworn.

(By the EXAMINER.)

Q. 1. What is your full name?

A. J. A. Bright.

Q. 2. What is your age, residence, and occupation?

A. My age, is forty-five; my residence, 626 Hayes street; my occupation, druggist.

(By Mr. OLNEY.)

Q. 3. Are you proprietor of the drugstore on Hayes street, called the Hayes Street Pharmacy?

A. Yes, sir.

Q. 4. How long have you been such proprietor?

A. A little over three years.

Q. 5. Are you acquainted with Clinton E. Worden & Co.?

A. Only in a business way.

Q. 6. You are acquainted with them in a business way?

A. Yes, sir.

Q. 7. Did you ever buy a preparation from them called "Syrup of Figs"?

A. Yes, sir.

Q. 8. I show you plaintiff's Exhibit "D," marked "Hayes Street Pharmacy," and ask you if you at any time purchased from Clinton E. Worden & Co. that or a similar article?

A. To the best of my memory I did.

Q. 9. Do you remember how you came to purchase it?

A. At the solicitation of his agent.

Q. 10. I noticed at the bottom of one face of Exhibit "D" there is the words "San Diego Fig Syrup Co." I will

ask how, if you know, that came to be put upon the bottle? A. No, I do not.

Q. 11. Did you give Worden & Co. any directions about that?

A. No, sir. Well, now, just let me qualify that; I think they gave me several names, different names that I could have—any one which I might wish—and I think in that way I selected “San Diego Fig Syrup Co.” rather than “Worden & Co.”

Q. 12. Then they presented you a list of names that you could select from? A. Yes, sir

Q. 13. Were they on printed slips, or how?

A. No; the agent presented it to me saying that I could have either of them that I wanted.

Q. 14. The names were given to you, were they?

A. Yes, sir.

Q. 15. You remember when this suit was brought, do you? A. Yes, sir.

Q. 16. Did you employ counsel to defend this suit?

A. No, sir.

Q. 17. Did you have any arrangement with Clinton E. Worden & Co. that they should defend you?

A. No; no arrangement except that the agent as he came around week by week told me that they were defending the case.

Q. 18. That they were defending the suit?

A. Yes, sir.

Q. 19. They were defending it for you, were they?

A. I didn't understand that. I understand that it all hinged on whether Worden had the right to manufacture.

Q. 20. But you didn't take any action in the matter at all? A. No, sir; not at all.

Q. 21. You didn't employ counsel? A. No, sir.

Q. 22. Do you remember whether or not Worden & Co's. solicitor came to you more than once before you bought the article?

A. Well, I would not hardly be able to say about that. My recollection is that he did several times before I bought.

Q. 23. Did he have anything to say to you about this "Fig Syrup" that he was trying to sell?

A. In what way do you mean?

Q. 24. I will ask you if he said any thing about it?

A. Well, of course, he recommended it.

Q. 25. Did he try to get you to buy it?

A. Yes, sir.

Q. 26. Did you furnish this man from Clinton E. Worden & Co. any design or name for the package?

A. No, sir.

Q. 27. What price did you pay Clinton E. Worden & Co. for this article?

A. I don't think I can tell now without consulting my books. I have not thought about it.

Q. 28. What did you retail it at?

A. I think it was twenty-five cents.

Q. 29. Did you make any profit on it?

A. Certainly. My recollection is that it was two dollars a dozen, but I am not positive about it.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. Mr. Bright, what was the name of the agent that called on you? A. I think it was Mr. Gray.

X. Q. 2. What was his full name?

A. I could not tell you.

X. Q. 3. Had he been calling on you before in regard to any matter? A. Yes, sir.

X. Q. 4. What matter?

A. The matter of selling goods of Clinton E. Worden & Co.

X. Q. 5. Then you had been purchasing other goods from Clinton E. Worden & Co? A. Yes, sir.

X. Q. 6. Had they been in the habit of coming to you soliciting you to purchase articles from Clinton E. Worden & Co.? A. Yes, sir.

X. Q. 7. What kind of articles?

A. Oh, nonsecrets.

X. Q. 8. And amongst other goods on this particular occasion he solicited from you the purchase of some "Syrup of Figs"? A. Yes, sir.

X. Q. 9. And you did purchase it from him, did you?

A. I did.

X. Q. 10. Now, in regard to the name that appears on the label, why didn't you put your own name on it, or the name of Clinton E. Worden & Co.?

A. Because I didn't want it. I didn't want my own name and I thought the other name would perhaps sell better than Clinton E. Worden & Co. It was suggested

to me that I could have either one of these three or four different styles that they were making it in these different styles.

X. Q. 11. That is, this agent suggested that there were a variety of names from which you could select?

A. Well, a variety of names in which they put it up that I could select from; yes, sir.

X. Q. 12. And the agent submitted these names to you? A. Yes, sir.

X. Q. 13. And among them was this name of "San Diego Fig Syrup Co.," and you selected that one?

A. Yes, sir.

X. Q. 14. What made you think that this name was any better than any other name?

A. I don't know that I can tell you exactly now what made me think so; there are a number of reasons perhaps that I could give you why I thought so.

X. Q. 15. Well, that is what I am asking.

A. Take for instance a nonsecret of that kind, if you are selling to the public and it has a name that is somewhere away off, they buy it more readily than if it is at home; that is one reason, perhaps it is the principal reason why I selected the name San Diego. There is just one point that I wish to make plain, that the name, "San Diego Fig Syrup Co.," was not put there at my solicitation; that is, that I did not originate it.

X. Q. 16. You mean to say that you did not originate the name? A. Yes, sir.

X. Q. 17. And that was amongst other names that he submitted as proper names, and you selected that one?

A. As names that they were using.

X. Q. 18. And you selected that one, did you?

A. Yes, sir.

X. Q. 19. And you told them to put that one on the label, did you?

A. Well, I don't remember about that. As I remember it now they came up there soliciting for the sale of this "Syrup of Figs."

X. Q. 20. I am not speaking about that. I am speaking about the name.

A. Well, I will come to that in a moment, perhaps. When the order had been given and submitted to me he asked me whether he should put on Clinton E. Worden & Co. or San Diego—I think there were several names. I said "Well, make it San Diego."

X. Q. 21. In pursuance of that it was made up and sent to you? A. Yes, sir.

X. Q. 22. How much did you get?

A. I think it was a dozen; I am not sure about that.

X. Q. 23. You mean a dozen bottles?

A. Yes; I am not sure.

X. Q. 24. Which you sold at the rate of twenty-five cents a bottle?

A. Yes; that is my recollection.

X. Q. 25. Now, had you had other preparations put up for you by Clinton E. Worden & Co.

A. Not of my own formula.

X. Q. 26. Well, this was not of your own formula, was it? A. This "Syrup of Figs"; no, sir.

X. Q. 27. Whose formula was that?

A. I didn't have Clinton E. Worden & Co. put this up specially for me.

X. Q. 28. What other medicine had you had put up for you by Clinton E. Worden & Co.?

A. I didn't have any; I bought goods that they had already put up.

X. Q. 29. What goods?

A. I remember one thing, that was worm lozenges, and I think some cough syrup and perhaps some syrup of sarsaparilla. I don't remember just all.

X. Q. 30. Did these goods, as so put up, have the imprint "Clinton E. Worden & Co." on the label, showing that the goods had been manufactured by them?

A. Some of them had, perhaps, and some of them had not.

X. Q. 31. Now, with reference to those that had not, what goods were they?

A. The only goods that I can recollect, I think, was some worm lozenges which I had under my own name.

X. Q. 32. You had your own name put on these?

A. Yes, sir.

X. Q. 33. In regard to these, you had these manufactured for you, did you not?

A. No, I did not.

X. Q. 34. You took stock goods then and had your name put on as manufacturer?

A. It is customary to do so, yes. You can select from any formula and have your name put on it, or have their name on it.

X. Q. 35. And in this case you had your name put on it? Yes; these lozenges.

X. Q. 36. You sold them in that way, did you?

A. Yes, sir.

X. Q. 37. So that they were represented to your customers as being put up and manufactured by you?

A. No, I don't know as they were represented as being manufactured by me; they simply had my address on them.

X. Q. 38. The label represented it to that effect, didn't it? A. No; I don't think so.

X. Q. 39. Wasn't the object of putting your name on the label to show that they were manufactured by you?

A. I don't think that it stated that they were manufactured by me.

X. Q. 40. The label had your name on it as manufacturer, didn't it?

A. I don't know that I remember.

X. Q. 41. Wasn't that the effect of the label, to show or to give the impression that it was manufactured by you? A. I don't remember as to that.

X. Q. 42. What did you put your name on that label for? A. For an advertisement.

X. Q. 43. In what way? What kind of an advertisement? A. An advertisement of the store.

X. Q. 44. Just explain that more fully, what you mean by that; to advertise the store by putting your name on the label?

A. Well, we often do that; very often put our name on any kind of patent medicine, simply to advertise the store.

X. Q. 45. Is that intended to carry the impression that these goods were manufactured at your store?

A. No, sir.

X. Q. 46. What is it intended to carry?

A. Simply where they are sold.

X. Q. 47. That they were sold at your store?

A. Yes, sir.

X. Q. 48. So that you could induce people to come back there and buy other goods?

A. Yes, that is about it.

X. Q. 49. Had you been selling any "Syrup of Figs" prior to the time that you bought these of Clinton E. Worden & Co.?

A. Well, the California "Syrup of Figs."

X. Q. 50. Had you been selling the California "Syrup of Figs"? A. Yes, sir.

X. Q. 51. That is the "Syrup of Figs" that is put up by the California Fig Syrup Co.? A. Yes, sir.

X. Q. 52. How long had you been selling that?

A. Oh, I don't know; for years.

X. Q. 53. Did you cease selling that after you commenced selling Clinton E. Worden & Co's.?

A. No, sir.

X. Q. 54. You carry both of them in stock, do you?

A. Yes, sir.

X. Q. 55. What was your object in carrying them both in stock?

A. Well, because there was more in one than there was in the other.

X. Q. 56. Which is the one that there is more in?

A. There was more in the Worden.

X. Q. 57. Do you mean more profit?

A. I mean more profit. Then there was another reason. People would come in and call occasionally for a

two-bit bottle of "Syrup of Figs," or "Fig Syrup"; the public had got to know that there a cheaper fig syrup on the market.

X. Q. 58. And they didn't want this expensive fig syrup?

A. No, they wanted a two-bit bottle occasionally.

X. Q. 59. And in justice to your customers who called for them you supplied your stock with the two-bit article?

A. Well, it was not that, really. It was the solicitation in the first place that induced me to buy it.

X. Q. 60. What induced you to buy it was the idea that you could get more money out of it, wasn't it?

A. No, the first inducement that made me buy it—I didn't know anything about it at all, at first—was the solicitation of their agent. I don't think I had ever heard that they had a "Syrup of Figs" until the man solicited me to buy it.

X. Q. 61. You say you received orders for two-bit bottles before that? A. I didn't say so.

X. Q. 62. You didn't say so a moment ago?

A. No, I think not.

X. Q. 63. Then you don't desire to say so now?

A. I don't desire to say so.

X. Q. 64. What you mean to say is that you had had calls for two-bit bottles, and that was one reason why you bought this "Syrup of Figs" of Clinton E. Worden & Co.?

A. I didn't say that before I had given any orders to Clinton E. Worden & Co. that I had had any calls for two-bit bottles.

X. Q. 65. You wanted to hedge a little on that proposition?

A. No; no, I don't want to hedge at all.

X. Q. 66. All right, then, get in that question now. You say you had orders for the two-bit article of "Syrup of Figs"? A. No, I didn't put it in that way.

X. Q. 67. What did you say?

A. I think I said I had calls.

X. Q. 68. Did you have the article in stock when you had calls for it?

A. I disremember, I could not say.

X. Q. 69. You don't remember anything at all about it? A. It is so long ago.

X. Q. 70. Isn't it the fact that you had calls for the two-bit article, and that you went out and got the article?

A. No, sir; that is not the fact.

X. Q. 71. The most natural supposition is that you went and got the two-bit bottles when you had calls for it, isn't it? A. No, I don't think so.

X. Q. 72. Did you go into the business of selling the "Fig Syrup" manufactured by Clinton E. Worden & Co. for any other purpose than to make a profit out of it?

A. Certainly not.

X. Q. 73. You found a reputable firm, a firm of standing in the community manufacturing an article out of which you could make a profit in the ordinary course of business, and you bought some of that stuff from them and sold it at a profit in the open market; that is about the fact, isn't it? A. That is about the fact.

X. Q. 74. There was no secret about the matter?

A. No, sir.

X. Q. 75. You didn't try to keep it secret from anybody? A. No, sir.

X. Q. 76. You had already heard, had you not, that there had been a suit over this "Syrup of Figs" manufactured by the California Fig Syrup Co.?

A. This man explained that the suit had been won; that they had a perfect right to sell this article.

X. Q. 77. So that you thought you had a perfect right to sell it? A. Yes, sir.

X. Q. 78. And that you were acting entirely within your rights in selling the article? A. Certainly.

X. Q. 79. You never for a moment had any idea that you were infringing upon anybody's rights?

A. No, sir.

X. Q. 80. Is that the general impression among druggists in regard to business?

(Objected to as incompetent, irrelevant and immaterial.)

A. Yes, sir.

X. Q. 81. When you found that suit had been brought against you, were you surprised at it in any respect?

A. Yes, sir.

X. Q. 82. In what way?

A. Well, I was not expecting it.

X. Q. 83. You didn't know that you had been doing anything for which you were liable to be sued?

A. No.

X. Q. 84. What did you do with the papers that were served on you? A. Kept them.

X. Q. 85. Did you speak to Clinton E. Worden & Co. about defending the suit?

A. I think not. I spoke, perhaps, with the agent as he came around. He told me that they were defending it.

X. Q. 86. He said the suit would be attended to?

A. Yes, sir.

X. Q. 87. You haven't paid anybody for defending it?

A. No, sir.

X. Q. 88. When you commenced to speak of this "Syrup of Figs" manufactured by Clinton E. Worden & Co. I understood you to say that you were selling that article and the article manufactured by the California Fig Syrup Co. at the same time?

A. Yes, sir; after I bought from Worden.

X. Q. 89. Now, sometimes you had a call for the two-bit article, and then you sold Worden's?

A. Yes, sir.

X. Q. 90. When you had a call for the other article, then you sold the other?

A. Yes, when I had a call for "Syrup of Figs," the California Syrup of Figs," I sold it.

X. Q. 91. On what occasion would you sell the other?

A. I kept the bottles on my showcase as I keep a great many bottles of my own manufacture on my showcase, where everybody comes in, and, if people make any inquiry about it, or ask for it, I sell it to them; otherwise I don't.

X. Q. 92. You never tried to pass off that for the other, did you? A. No, sir; I never did.

X. Q. 93. You were entirely fair, open and above board with your customers in that regard? A. Yes, I was.

X. Q. 94. Could you truthfully say that you did not deceive any of your customers by trying to pass off one for the other? A. Yes, sir.

X. Q. 95. They could take their choice, whatever they liked? A. Yes.

X. Q. 96. That was about the substance of it, was it? A. Yes, sir.

X. Q. 97. Did you find any difference between these two articles? A. Well, I never tested them.

X. Q. 98. You assumed that one was as good as the other, so far as the medicine was concerned?

A. No, I don't think I assumed anything about it.

X. Q. 99. You were simply selling it, then, to make more profit out of it than you could out of the other?

A. Yes, sir.

X. Q. 100. You didn't know whether one was superior to the other, did you?

A. No, so far as that was concerned I didn't know one was superior to the other.

X. Q. 101. As long as people came there, and were willing to buy what you had to sell you would sell it to them and make a profit out of it?

A. That is the usual way of doing business.

X. Q. 102. Did you sell the entire dozen bottles that you bought from Worden? A. I think so.

X. Q. 103. You only bought one batch from him?

A. I could not say how many I bought.

X. Q. 104. I understood you to say that your impression was that you bought one dozen.

A. At that time; I may have bought some later; in fact, I know that at the time these papers were served

on me I had just bought, just got some in, and I returned it.

X. Q. 105. You have not bought any since, have you?

A. No.

X. Q. 106. What have you been selling since the suit was brought?

A. The California Fig Syrup Co.'s preparation.

X. Q. 107. You have been buying it from the complainants in this case, have you?

A. I have been buying it from wholesale houses.

X. Q. 108. What wholesale house have you bought it from?
A. Mack & Co., Langley, Michaels & Co., and—

X. Q. 109. Do you receive any calls now for the two-bit article?
A. Well, I don't think I do.

X. Q. 110. Do you keep any of this other article in the showcase now, or has it been removed?

A. Which other article?

X. Q. 111. Worden's "Syrup of Figs."

A. No, no; I don't keep it now.

X. Q. 112. Do you know what is the formula of the California Fig Syrup Co.'s medicine?
A. No, sir.

X. Q. 113. Do you know what is the formula of the Worden?
A. No, sir.

X. Q. 114. Were you subpoenaed to come down here and testify?
A. I was.

X. Q. 115. By whom were you subpoenaed?

A. I don't know.

X. Q. 116. Some one served you with a paper to come?

A. Yes, sir.

X. Q. 117. Have you talked with anyone connected

with the California Fig Syrup Co. since this suit was commenced? A. Since when?

X. Q. 118. Since this suit was commenced?

A. I don't know the year that this suit was commenced. Is this the suit that was commenced a year ago? Yes.

X. Q. 119. With whom did you talk?

A. A gentleman who was in attendance here.

X. Q. 120. Mr. Richard E. Queen, is he the one?

A. Yes, that is the gentleman.

X. Q. 121. Where did you have a talk with him?

A. In the store.

X. Q. 122. When was it? A. Well, I don't know.

X. Q. 123. What was the conversation that you had with him?

A. The conversation was about like this; whether I had ordered the name "San Diego Fig Syrup" put on this package?

X. Q. 124. You told him, I presume, substantially what you have stated here? A. Yes, sir.

X. Q. 125. What did he say then?

A. He didn't say much.

X. Q. 126. Did anything else occur?

A. Nothing else.

X. Q. 127. Nothing at all?

A. Not that I remember of, any more than he may have—let me see, I can think of something more of the same conversation. I think he told me at that time that Clinton E. Worden had testified that that was put on there entirely at my solicitation. I think he told me that.

X. Q. 128. Anything else?

A. Not that I remember.

X. Q. 129. That is substantially the conversation that occurred? A. Yes, sir.

X. Q. 130. What did he say to you afterward, about your testifying?

A. I think he said that they would subpoena me to appear before the Court.

X. Q. 131. Did you say that you would come?

A. Why, certainly; if I received a subpoena.

X. Q. 132. Of course, you would come if you received a subpoena, but what I ask you is, did you tell him that you would come if he wanted you? A. No, sir.

X. Q. 133. When did you come?

A. About half-past twelve o'clock today.

X. Q. 134. When did you buy any goods of the California Fig Syrup Co. last? A. I could not tell you.

X. Q. 135. Did Mr. Queen say anything to you about selling any of this stuff? A. No, sir.

X. Q. 136. Have any of the agents of the California Fig Syrup Co. called on you? A. No, sir.

X. Q. 137. Which agents did you get it from?

A. From a wholesale house.

X. Q. 138. Which wholesale house?

A. From different wholesale houses, once or twice a week; whenever I am in need of it; the first man that comes up gets the order.

X. Q. 139. Now, this Exhibit "D," which I now hand you, is one, I believe, which you say is one of the packages put up by Clinton E. Worden & Co., and sold by you as you have testified to?

A. Yes, as near as I can recollect.

X. Q. 140. Now, what idea was intended to be conveyed by the use of these words on that wrapper, "Syrup of Figs"? A. I could not tell you.

X. Q. 141. You understand the English language, do you not? A. Yes, sir.

X. Q. 142. You are American-born, are you?

A. Yes, sir.

X. Q. 143. What does the word "Syrup of Figs" mean? That is, what impression does it carry to the mind when used for the first time?

A. You ask me what it was intended to convey?

X. Q. 144. I ask you what the impression would be that would be carried to the mind by the word for the first time? A. That it was "Syrup of Figs."

X. Q. 145. When did you first hear of it?

A. Oh, I could not tell you.

X. Q. 146. Now, when people come into your store, or into any other store, and buy an article called "Syrup of Figs," do you know what ideas they have with regard to the constituents of that medicine, so far as figs are concerned? A. No, sir; I do not.

X. Q. 147. Notice the context of this label, Exhibit "D"; it says that it is a "combination of harmless and efficient substances combined with the delicious laxative juices of the best Smyrna figs." Now, was that put on there for the purpose of showing that figs enter into its composition? A. I would suppose so.

Mr. OLNEY.—I move to strike out the witness' answer that he supposed so, as irrelevant and immaterial. It is not a question of opinion at all.

X. Q. 148. (By Mr. MILLER.)—Can you give any reason why it would be desirable in making a salable medicine of this kind to put on the label a statement to the effect that it contains figs in some form or other, rather than any other syrup?

A. I don't think I quite catch your question.

X. Q. 149. Well, I will put it in this way then. I presume that you are aware of the popular impression that has prevailed for a long time to the effect that figs are laxative in some way, are you not? A. Yes, sir.

X. Q. 150. The public have that idea, or a great many of the public have that idea, have they not?

A. Yes, sir.

X. Q. 151. Now, would that make a medicine salable as a laxative or not, that it contains, or had a statement that it contains, figs in some form or other?

A. I think it would.

X. Q. 152. How long have you known of this popular impression regarding the supposed laxative quality of figs?

A. Oh, I don't know; I have no idea when I first got the idea.

X. Q. 153. But as a druggist you have observed that impression amongst people, have you not?

A. I don't know that I have particularly; I don't know that I have. I can't recollect anybody ever talking with me about the laxative quality of figs.

X. Q. 154. You know of that popular impression existing, do you?

A. Yes, I know that there is such an impression.

X. Q. 155. But you mean now that you don't remember any individual case where a person spoke to you about it? A. No.

X. Q. 156. You are a druggist, and have had long experience in selling medicine and things of that kind to the public, and I will ask you this question; if this bottle, this package, Exhibit "D," were to be in a drugstore in open view where anybody could see it, and a person should come in who wanted a laxative, and he had never heard of "Syrup of Figs" as a laxative, and if he were to see this label with the name on it, "Syrup of Figs," having the impression that figs were a laxative, now what impression would be conveyed to his mind by the use of these words, "Syrup of Figs," so far as the laxative qualities of the medicine are concerned?

(Objected to as incompetent, irrelevant and immaterial, and on the further ground that it is impossible for the witness to say what would be in anybody else's mind.)

A. You want to know what the impression would be?

X. Q. 157. I want to know from your experience as a druggist of long standing in selling medicines of this and other kinds to the public at large, men, women and boys, for instance, when they come into your store to ask for a laxative medicine, wanting a laxative medicine, when they see this bottle upon your shelf with the words "Syrup of Figs" on it, and when they know or have an idea that figs are laxative, now, from your experience, what would be the impression that would be conveyed to the mind of such people from seeing that name?

A. That it would be a good laxative medicine.

X. Q. 158. That is the most natural conclusion that a person would come to, is it not?

(The same objection; also on the ground that this witness cannot state what was in the mind of other people. No answer.)

X. Q. 159. Now, I show you complainant's Exhibit "E," and ask you if you recognize that as a package of the complainant's? A. Yes, sir.

X. Q. 160. You notice the words "Syrup of Figs" on that, do you? A. Yes, sir.

X. Q. 161. And also notice the words "California Fig Syrup Co.," do you not? A. Yes, sir.

X. Q. 162. You also notice the branch of figs, do you not? A. Yes, sir.

X. Q. 163. And you also notice the figtree, and the young lady holding the branch of figs, on each end of the box, do you not? A. Yes, sir.

X. Q. 164. Now, if a person should come into your store and want a laxative medicine, and were to see this package, having the idea that figs in general were laxative, what impression would be conveyed to his mind as to the use of these words, "Syrup of Figs," as far as your experience goes as a druggist in selling medicine of that kind to the public at large?

(Objected to as incompetent, irrelevant and immaterial, and calling for an opinion of the witness, and calling for the witness to make a statement as to the mental operations of other people.)

A. I think it would be favorable. I think they would think favorable of the medicine.

X. Q. 165. As a laxative?

A. As a laxative, yes.

X. Q. 166. Isn't it the fact that a majority of the people buy medicine more on faith than on any actual knowledge of their constituents?

(The same objection.)

A. Well, I could not say as to that.

X. Q. 167. Has it not very frequently been that a person comes into your store and says he has such and such an ailment, and says, "Give me a remedy for it?" Isn't that a fact? A. Yes, very often.

X. Q. 168. And you knowing the remedy for that particular case, put out a bottle, or whatever form it is, sell it to him and tell him that it is a good remedy; isn't that the fact? A. Yes, sir.

X. Q. 169. And he takes it, and is satisfied with it?

A. Well, he takes it.

X. Q. 170. It may be good, or it may not be good?

A. Yes, sir.

X. Q. 171. That can only be determined after he takes it? A. Yes, sir.

X. Q. 172. But that illustrates the manner in which people call for medicines very frequently. It goes to show that it is a matter of faith, does it not?

A. Yes, I think so.

Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. How long have you known the complainant's medicine, "Fig Syrup," or "Syrup of Figs?"

R. Q. 2. It is a long while, isn't it?

A. Yes, it is a long while.

R. Q. 3. What is the proper name of that medicine?

A. "Syrup of Figs."

R. Q. 4. Well, call it "Syrup of Figs." When the name "Syrup of Figs" is used, what does the trade understand it to refer to?

A. California "Syrup of Figs," I think.

Recross Examination.

(By Mr. MILLER.)

R. X. Q. 1. Now, when you were selling the Worden "Syrup of Figs," I understand you to say that you never tried to pass it off for the other stuff?

A. That is right.

R. X. Q. 2. You sold it openly and above board, did you? A. Yes, sir.

R. X. Q. 3. Now, when people came in and called for that article, what name did they call for?

A. Called for which article?

R. X. Q. 4. The "Syrup of Figs" that you sold.

A. I don't know. I think what I sold was sold from just standing on the counter and them seeing it, or that they would come in and ask specially.

R. X. Q. 5. What did they say on these occasions?

A. I don't remember.

R. X. Q. 6. Did they see the name "Syrup of Figs" on the label? A. Yes, sir.

R. X. Q. 7. Is that the way of it? Is that the way all

of your stuff was sold, in individual instances like that?

A. All what stuff?

R. X. Q. 8. The "Syrup of Figs" that was put up by Worden?

A. I don't remember how every individual bottle was sold. I could not tell you that.

R. X. Q. 9. Did you ever sell any of the Worden article out of the city, send it away on orders anywhere?

A. I think not.

R. X. Q. 10. Did you ever send any of the California "Syrup of Figs" article out of the city?

A. I don't think so.

R. X. Q. 11. Yours is a transient retail trade, isn't it?

A. Yes, sir.

R. X. Q. 12. Did you ever sell any more than one bottle at a time? A. I could not say.

R. X. Q. 13. Now, how would you know the difference between these two articles when people would come in? How would you know which one they wanted?

A. Well, I don't think I could exactly tell you. If they asked for California "Syrup of Figs," they got it. I never tried to sell them, any more than just leaving it sit on my showcase; if they came along and seen it and wanted it, they got it; if they didn't, they did not.

R. X. Q. 14. When they called for the California "Syrup of Figs" you sold them California "Syrup of Figs?" A. Yes, sir.

R. X. Q. 15. And when they called for the other article you sold them the other article? A. Yes, sir.

R. X. Q. 16. Now, when they called for that Worden article, what did they name it?

A. I suppose they asked for a two-bit bottle.

R. X. Q. 17. You don't remember about that?

A. I don't remember, but I think that was about the way of it.

Examination in chief of

TRUMAN F. BACON, a witness called on behalf of complainant; sworn.

(By Mr. OLNEY.)

Q. 1. What is your full name?

A. Truman F. Bacon.

Q. 2. What is your age? A. Sixty-three.

Q. 3. And your occupation?

A. Druggist and physician.

Q. 4. Where is your place of business?

A. Corner of Gough and Hayes streets.

Q. 5. What is the name of the drugstore in which you do business?

A. I call it the Ariel Pharmacy. I was formerly at 510 Hayes street.

Q. 6. That is the name of your drugstore, is it, the Ariel Pharmacy? A. The Ariel Pharmacy.

Q. 7. Have you been acquainted with a medicine on the market put up by the California Fig Syrup Co. called "Syrup of Figs?" A. I have.

Q. 8. How long have you been acquainted with that medicine?

A. Well, that would be hard to say. I have only been in business a little over eight years; well, nine years.

I knew it, of course, before I went into business, but I could not tell you how long before.

Q. 9. Were you ever at any time solicited by an agent of Clinton E. Worden & Co. to sell an imitation medicine—to buy an imitation medicine? A. I was.

Q. 10. Did you make any purchase from Clinton E. Worden & Co.? A. I did.

Q. 11. Was any suggestion made to you as to the name that should be put upon the bottle?

A. He showed me the carton.

Q. 12. They showed you the carton?

A. Yes, as to the place where it was made.

Q. 13. I show you complainant's Exhibit "H," indorsed "May 11, 1897, R. E. Q.," and ask you if the preparation you purchased from Clinton E. Worden & Co. is like that? A. Yes, that is my mark. (Pointing.)

Q. 15. Then this exhibit (H) has a mark on it?

A. Yes, sir.

Q. 16. This exhibit "H" was purchased by you from Clinton E. Worden & Co.? A. Yes, sir.

Q. 17. How did the name "New York Fig Syrup Co." at the bottom of the carton come to be there, do you know?

A. Well, they had a number of names on the imprint; I don't remember; there were a number of them, and I chose that as being as good as any other. That is all I can say.

Q. 18. Was there any statement made to you at the time about your right to sell this article?

A. Yes, sir.

Q. 19. What was the statement?

A. Well, to the effect that the California Fig Syrup Co. had been beaten in their suit, and that any one had a right to put up medicine of the same sort, and use that name. When I suggested that there might be some trouble, the salesman said that I would be protected if there was any trouble, that they would assume the responsibility.

Q. 20. You are one of the defendants in this suit, are you not? A. Yes, sir.

Q. 21. Did you employ counsel to defend you?

A. I did not.

Q. 22. Did you make any statement to Clinton E. Worden & Co., or their representative, in regard to the suit, that suit had been brought against you?

A. Well, I don't know; he was in every week, and I asked about the suit.

Q. 23. Well, what did he say?

A. Why, he told me the suit had been brought.

Q. 24. Was anything said about his defending the suit for you? Protecting you?

A. Not that I remember specially; that was understood at the first.

Q. 25. You have not yourself employed attorneys in the case? A. No, sir.

Q. 26. You have paid no attention to it? A. No.

Q. 27. What price did you pay for this medicine?

A. Well, it was a little over two dollars a dozen. I don't remember now exactly.

Q. 28. What do you sell it for? What do you retail it at? A. Two bits.

Q. 29. Was any statement made to you in regard to other druggists who were selling this medicine, and the statement made as an inducement to you to purchase?

A. Yes, sir.

Q. 30. What was it?

A. Well, the salesman showed me a list of a number who bought it and were selling it.

Q. 31. Well, it was represented to you then that other druggists were selling it? A. Yes, sir.

Q. 32. And that was in connection with a solicitation for you to buy? A. Yes, certainly.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. What is the name of this agent from Clinton E. Worden & Co. who called on you in regard to this matter? A. His name is Gray.

X. Q. 2. That is the same one who was mentioned by the last witness, is it not?

A. Well, I wasn't here at the beginning of his testimony.

X. Q. 3. Did you hear the testimony of Mr. Bright, who was a witness on the stand?

A. I only heard a part of it; I didn't hear the first of it.

X. Q. 4. Did this agent sell you any goods of any kind but this? A. Oh, yes.

X. Q. 5. What kind of goods did he sell you?

A. Oh, various goods.

X. Q. 6. Such articles as would be manufactured by Clinton E. Worden & Co., I presume?

A. Yes, sir.

X. Q. 7. You had been in the habit of buying articles from him, had you? A. Yes, sir.

X. Q. 8. How often had he been in the habit of calling on you for orders? A. As a rule, twice a week.

X. Q. 9. He came around in the regular course of business and asked whether you were in need of any of such and such an article, and if not whether you wanted anything else, any more goods? That would be about the way of it? A. Yes, sir.

X. Q. 10. You were one of his regular customers, were you not? A. Yes, sir.

X. Q. 11. Now, when was it that you bought this first package of "Syrup of Figs" from Clinton E. Worden & Co? A. That I could not tell you.

X. Q. 12. How much did you buy?

A. If I remember, I bought half a gross, if I remember rightly.

X. Q. 13. You only made one purchase, did you?

A. I only made one purchase.

X. Q. 14. And that you think was half a gross?

A. Yes, sir.

X. Q. 15. The agent came around and told you that there had been a suit about this name in the East and that the California Fig Syrup Co. had lost the suit, and the Court had decided that it did not have any exclusive right to that name? A. Yes, sir.

X. Q. 16. Did he? A. Yes, sir.

X. Q. 17. And that, therefore, other druggists had the right to use that name, "Syrup of Figs," did he not?

A. Yes, sir.

X. Q. 18. And he suggested that he put up some of the medicine for you, and that you undertake to sell it?

A. Yes, sir.

X. Q. 19. There was nothing secret or underhanded about it, was there? A. Nothing at all.

X. Q. 20. Everything was open and above board, was it? A. Yes, sir.

X. Q. 21. You believed what he said in relation to this matter, did you? A. Certainly.

X. Q. 22. And you concluded that you could make some money by following his suggestion?

A. Yes, certainly.

X. Q. 23. Therefore you ordered some of the medicine from him? A. Certainly.

X. Q. 24. That was in the same way that you would order any other medicine? A. Certainly.

X. Q. 25. Now, then, in regard to this name, I believe you testified, didn't you, that this name appearing on the label "New York Fig Syrup Co." was a good enough name for the medicine? A. Yes, sir.

X. Q. 26. Well, now, what was it that made you think that this particular name was proper for it?

A. Well, only this, that you know, as the saying goes, "Distance lends enchantment," and a good many people think that an article from a distance is better than coming from right at home.

X. Q. 27. It was that that induced you to select this name as being a proper one, was it? A. Yes, sir.

X. Q. 28. And you then instructed them to put that in the imprint on the labels? A. Yes, sir.

X. Q. 29. And it was done in pursuance of that?

A. Exactly.

X. Q. 30. It is a common practice among druggists, isn't it, to select names that way in order to make an article salable? A. Yes, sir.

X. Q. 31. In fact, in the drug business, you have to appeal to all kinds of whims and notions of customers?

A. Most assuredly.

X. Q. 32. They take medicine as a matter of faith, do they not?

A. No, not as a matter of faith; they take it on recommendation and advice, and as a matter of reputation.

X. Q. 33. What I mean is, they do not understand what the constituents are?

A. Of course not.

X. Q. 34. They take it on the representation of other people or on a prescription of their physician and in that way I mean that they take it as a matter of faith. That is about the fact, isn't it?

A. Well, yes; call it faith, if you choose.

X. Q. 35. As a matter of confidence in other people?

A. That is, confidence in what others say. Others say "I have used it and find it good," and they try it.

X. Q. 36. And they do it without knowing what the actual constituents are, do they? A. Yes, sir.

X. Q. 37. Now, when you bought this medicine from Clinton E. Worden & Co., what did you proceed to do with it? A. Why, I exposed it for sale.

X. Q. 38. Put it up in your store in open public view?

A. Yes, put some of it in my show window.

X. Q. 39. Did you have any calls for it?

A. Yes, sir.

X. Q. 40. You sold some of it? A. Yes, sir.

X. Q. 41. At two-bits a bottle?

A. At two-bits a bottle.

X. Q. 42. How did people call for it?

A. "Syrup of Figs," and I would sell that whenever I could.

X. Q. 43. You were selling the other article also at the same time? A. Yes, sir.

X. Q. 44. Which one did you sell the most of?

A. I sold the most of the California Fig Syrup Co.

X. Q. 45. Did you ever try to pass the Worden syrup off as the California Fig Syrup Co.'s production?

A. No, sir.

X. Q. 46. You never deceived anyone in that regard?

A. No, sir.

X. Q. 47. So that none of your customers who bought this Worden Fig Syrup from you were deceived into buying it, supposing that it was the other article?

A. No, sir.

X. Q. 48. It was a matter of choice which they would take? A. Yes, sir.

X. Q. 49. If they wanted a two-bit bottle they got the Worden, and if they wanted a four-bit bottle they got the other, did they? A. Yes, sir.

X. Q. 50. Are you aware of a general public impression that exists among people that figs have some kind of laxative qualities? A. Yes, sir.

X. Q. 51. How long have you known of that impression? A. A good many years.

X. Q. 52. It is quite a common impression among people generally? A. Certainly.

X. Q. 53. Now, with people who have that impression, what would be the natural conclusion they would arrive at concerning the constituents of a medicine if they should see the bottle labeled "Syrup of Figs" with the statement on it that it was a laxative medicine?

(Objected to as incompetent, irrelevant and immaterial, calling for a statement of the witness and in no sense proper testimony.)

Mr. MILLER.—I withdraw the question.

X. Q. 54. Now, Mr. Bacon, you are a druggist of long standing and I presume have had large dealings, extensive dealings with people who come in to buy medicine at your drugstore, men, women and boys?

A. Yes, sir.

X. Q. 55. And you know pretty well about the way people of that kind do when they come in to buy medicine. Now, if a person were to come into your store and wanted a laxative medicine and you knew he had the impression that figs were laxative in some way or other, and he should see a bottle of laxative medicine labeled "Fig Syrup" or "Syrup of Figs," with the statement on it that it was a laxative, now from your experience in that line what would be the impression that would be conveyed to the mind of that person by seeing that name upon that label?

(Objected to as incompetent, irrelevant and immaterial, in no sense, no proper sense, testimony, legal testimony

in this case, and calling for a conclusion of the witness, not a statement of facts.)

A. Well, the impression, of course, would be that it is a laxative medicine.

X. Q. 56. Would the name "Syrup of Figs" have anything to do with creating that impression on his mind?

(Objected to as incompetent testimony; not legal in any way, shape or form.)

A. Well, the use of that name would certainly convey the impression that it was a laxative medicine.

X. Q. 57. When do you first remember of hearing this name "Syrup of Figs"?

A. Well, I could not tell you now; it is a long time ago.

X. Q. 58. When you first heard of it what did you suppose the constituents of the medicine were judging from the name?

(Objected to as incompetent, irrelevant and immaterial.)

A. I don't know as I ever thought of the name specially. I knew, of course, the laxative quality of figs was very little, figs being only slightly laxative, and that other medicines have to be compounded with them to make it of much value as a laxative.

X. Q. 59. Suppose you were to see a bottle labeled in big letters "Syrup of Strawberry," what would be the natural impression conveyed to your mind as to the constituents of that medicine?

A. Well, naturally I would think, of course, it would be what the name indicated.

X. Q. 60. The object of the label is to indicate what is inside of the bottle, isn't it? A. Certainly.

X. Q. 61. Now, when you see the name, when you first see the name "Syrup of Figs" on a bottle would you not have that same impression arising that there was syrup inside of the bottle made from figs?

A. Certainly, I would.

X. Q. 62. That would be the natural conclusion, that opinion would come from seeing it, wouldn't it?

(The same objection, also, as incompetent, irrelevant and immaterial.)

A. Certainly.

X. Q. 63. That would be about on the same principle as if you saw a barrel labeled barrel of flour, you would suppose that it contained flour? A. Yes, sir.

X. Q. 64. Did you notice any difference in quality between the Fig Syrup made by the Clinton E. Worden Co. and that made by the California Fig Syrup Co.?

A. I never opened a bottle of "Syrup of Figs" made by the California Fig Syrup Co. I sold it just as it was.

X. Q. 65. I suppose you presumed that the Worden article was a good article, did you not, from the packages you sold? A. Yes, sir.

X. Q. 66. It was made by a reputable house, was it not? A. Yes, sir.

X. Q. 67. But as to its actual constituents, that you don't know of your own knowledge? A. No, sir.

Redirect Examination.

(By Mr. OLNEY.)

R. Q. 1. I believe you said you did not know how long you had known of this medicine put up by the California Fig Syrup Co.? A. No, sir.

R. Q. 2. You do know, however, do you not, that when the term "Syrup of Figs" is used, or "Fig Syrup," it is understood in the trade to refer to their medicine? Do you not know that? A. Yes, sir.

R. Q. 3. For instance, if you wish to order any of the complainant's medicine you would simply order "Syrup of Figs," or "Fig Syrup"? A. Certainly.

R. Q. 4. This is understood in the trade?

A. Certainly.

R. Q. 5. And the reputation of this medicine is good in the community, is it not? A. Yes, sir.

R. Q. 6. Therefore, if a medicine bears the name "Syrup of Figs" it is more likely to sell, is it not, just for that reason?

A. Certainly; the advertising of it has created a demand for it.

R. Q. 7. And if any other medicine is sold under that name, the purchaser, the people who want laxative medicines, would be induced to buy just because of the good reputation of the complainant's medicine?

A. Yes, sir.

R. Q. 10. Now, when customers called for "Syrup of Figs," if you gave them the medicine that you bought from Mr. Worden they would take it, would they?

A. They would.

R. Q. 11. Suppose they made an objection and asked if it was the genuine "Syrup of Figs," what did you do then?

A. I told them the truth about it; that it was an imitation.

R. Q. 12. If they did not ask any questions at all you sold them the medicine and let them take it away without any explanation?

A. No, I would show them the bottle that I was selling at thirty-five cents. That was what it retailed at; there was no profit on it at all; where the other retailed at twenty-five cents.

R. Q. 13. One bottle retailed at thirty-five cents and the other at twenty-five cents? A. Yes, sir.

R. Q. 14. Would you make any other representations to them?

A. Sometimes I would say that this is a good medicine, recommend it.

Examination of

RICHARD E. QUEEN, recalled on behalf of complainants.

(By Mr. OLNEY.)

Q. 1. Mr. Queen, counsel for the defendant asked you to produce an advertisement here; have you that advertisement that he asked you to produce?

A. Yes, I have. It has been in evidence.

Q. 2. Now, have you any advertisement that has been running through the papers extensively during the last year? A. I have.

Q. 3. Is this one of them which I show you?

A. Yes, it is an advertisement that has been alternating for the past year with other advertisements.

Mr. OLNEY.—We offer this in evidence. It is one page of the Cleveland Press, published at Cleveland, Ohio, under date of Tuesday, April 12, 1898.

(Marked "Complainant's Exhibit W.")

Q. 4. I ask you if this is a sample of the advertisements that you were publishing extensively at that time?

A. Yes, sir.

Cross-Examination.

(By Mr. MILLER.)

X. Q. 1. This is the same thing that is in the "Examiner" and others papers, isn't it? A. Yes, sir.

X. Q. 2. Have you any advertisements of your medicine in which it is not stated or mentioned that senna is its active constituent?

A. Yes, sir. That you have already introduced in evidence.

X. Q. 3. Which papers were they published in?

A. Well, they were published in a number of papers.

X. Q. 4. What character of papers?

A. Newspapers; daily newspapers.

X. Q. 5. Daily newspapers? A. Yes, sir.

X. Q. 6. Now, here is an advertisement that has been offered in evidence, marked "Respondent's Exhibit No. 13," from the Reno "Evening Gazette," of November 19, 1898. That does not mention the fact that your medicine contained senna, does it? A. It does not.

X. Q. 7. Now, tell me what papers that was published in.

A. This was published in the daily and weekly newspapers.

X. Q. 8. In how many of them?

A. Well, a great many; I don't remember the number.

X. Q. 9. In what parts of the country?

A. Pretty much all over the United States, I think.

X. Q. 10. In pretty nearly every State in the Union?

A. I think so.

X. Q. 11. In fact, you are great advertisers, are you not?

A. We are.

X. Q. 12. Did you publish that in any other papers outside of the daily papers that you have referred to?

A. Particularly the daily and weekly newspapers.

X. Q. 13. Did you publish it in "Harper's Weekly"?

A. No, I don't think we ever published that same advertisement in "Harper's Weekly."

X. Q. 14. I hand you an advertisement now and ask you if it is not an advertisement that is published in "Harper's Bazaar"?

A. Yes, this has been published in "Harper's Bazaar."

X. Q. 15. It is being published in that, is it not?

A. It has been published since the first of the year. I was speaking at first of last year.

X. Q. 16. In what other papers are you publishing this?

A. Well, in a great many magazines and newspapers; daily and weekly newspapers.

X. Q. 17. All over the United States?

A. Yes, sir.

X. Q. 18. In practically every State in the Union?

A. I think so.

X. Q. 19. How much do you say you spend annually in advertising this medicine, in rough numbers?

A. It varies; say from two hundred thousand dollars to three hundred thousand dollars per annum.

X. Q. 20. Why is it that you don't mention in this advertisement from "Harper's Bazaar" that senna is the active principle of your medicine?

A. Well, we change our advertisements. In some we mention it and in some we do not.

X. Q. 21. You don't mention that fact in these popular newspapers such as those that have been put in evidence here. (Showing an advertisement of the kind where it is not mentioned.)

A. Yes, we do at certain times.

X. Q. 22. At what times?

A. Well, maybe during one month or during two months, we run one of the above advertisements and then drop it and publish another advertisement, and in that way we endeavor to publish a statement in nearly all the leading newspapers of the United States. We endeavor to advertise in all sections of the United States that the laxative principles are obtained from senna, but we don't publish this statement all the year round; we publish them only certain weeks or certain months of the year.

X. Q. 24. What is the objection to stating in all of your advertisements that senna is the active principle?

A. I have no objection to making this statement, but space is necessarily limited and sometimes I devote all of the space to the statement of the effects of the remedy,

and in another advertisement I devote all the space to a statement of the composition of the remedy.

X. Q. 24. Why, would you make that distinction in the two styles of advertisement is what I want to get at?

A. Well, it is difficult to state it all at one time. You can't crowd so many statements into so small a space.

X. Q. 25. So, it was on account of the scarcity of space in the advertisement that you failed to state that the active constituent is senna in these instances where you have failed to make that statement, is it?

A. There may be space enough in which to make the statement, but I can't make all the statements that I wish to make on the subject at one time.

X. Q. 26. It takes only about three lines to make that statement, according to this advertisement, does it not?

A. There are from five to six or more lines devoted to it in this advertisement.

X. Q. 27. Read that part of it which is devoted to it in that advertisement, and that part only.

A. You wish the whole sentence read, do you?

X. Q. 28. Yes, sir.

A. (Reading). "When one learns of the qualities which commend an article to general favor, valuable information is acquired, and in recognition of the facts the California Fig Syrup Co. has continuously published for many years past that it obtains by a method of its own the medicinal laxative virtues of the choicest selections of senna, and combines that with an excellent combination of aromatic carminatives to form the pleasant and effective family remedy 'Syrup of Figs.' This remedy is so well and favorably known and has given such univer-

sal satisfaction throughout the world that it is interesting to know the above facts, and also the statement which they make and have always made, that the medicinal virtues and distinctive flavoring of the remedy are obtained from plants and not from figs, as figs are simply a food and only a very small quantity of the juice of the figs is used in the combination to form a pleasant taste, simply as one adds a little sugar to coffee or tea, not to give strength or flavoring to the coffee or tea, but to make it more palatable, and with this difference, that coffee and tea are used as pleasant beverages, while the "Syrup of Figs" manufactured by the California Fig Syrup Co. is a most excellent medicinal laxative and always sold and used as such."

X. Q. 29. Now, what paper is that advertisement in?

A. The Cleveland (Ohio) "Press."

X. Q. 30. Of what date?

A. It is dated April 12, 1898.

X. Q. 31. Was that the first insertion of it?

A. No, I think not.

X. Q. 32. When was the first insertion of it?

A. Early in 1898.

X. Q. 33. Is it running in that paper now?

A. It is; I do not mean to state that it is running this very day, but I mean from day to day.

X. Q. 34. Now, I will show you another one of these advertisements, complainant's Exhibit "C," from the Cleveland "Leader," February 1, 1896, and ask you if there is any lack of space in that advertisement where you could insert the statement that the active ingredient of your medicine is *senna*?

A. There is plenty of space there in which you could make that statement.

X. Q. 35. You did make that statement in your advertisement from the "Evening Post," Louisville, Kentucky, April 22, 1896, complainant's Exhibit "C," did you not?

A. I did.

X. Q. 36. There was no lack of space there, was there?

A. There was not.

Mr. MILLER.—We offer in evidence the advertisement which has been produced by the witness as being published in "Harper's Bazaar," Jan. 7, 1899, and ask that it be marked "Respondent's Exhibit No. 19."

(Marked Respondent's Exhibit No. 19.)

(Further hearing continued subject to notice.)

Saturday, March 1, 1899, 11 A. M.

Counsel appearing:

For complainant, Warren Olney, Esq.

For respondent, Purcell Rowe, Esq.

Examination in chief of

WASHINGTON DODGE, M. D., a witness called on behalf of respondent; sworn.

(Mr. ROWE.)

Q. 1. Doctor, will you give your name, age, residence, and occupation?

A. Washington Dodge; thirty-nine years of age; physician and surgeon by occupation; residence, 1714 Van Ness avenue, San Francisco.

Q. 2. Doctor, have you occupied any official position in regard to your professional work?

A. I hold the position of professor of therapeutics in the Medical Department of the State University.

Q. 3. Doctor, I show you a paper purporting to be an analysis of a preparation called "Syrup of Figs," and I will ask you, doctor, in looking over that, do you find any ingredient that has any cathartic action?

A. Yes, sir.

Q. 4. What is it, doctor?

A. Extract of senna.

Q. 5. Is there any ingredient there that you know that has any cathartic action other than the senna?

A. No, sir.

Q. 6. I will ask you, doctor, if senna will permanently cure habitual constipation?

(Objected to as incompetent, irrelevant, and immaterial, and on the further ground that it is a matter that has been gone over very fully in a previous examination.)

A. It is not a drug that, in my experience, will do so, nor have I ever seen any authority that claimed that.

Q. 8. Your duties, doctor, as professor, holding the chair of therapeutics, would bring you into contact, would they not; with all of the medical authorities that would bear upon the subject, the therapeutical properties of senna?

A. I could not say that it would with all of them.

Q. 9. I mean the standard authorities.

A. I am supposed to be familiar with the standard authorities as to the action of drugs.

Q. 10. And you are basing your answer, the foregoing answer, that you have made, both upon your experience and upon your knowledge derived from the authorities, are you not? A. Yes, sir.

Q. 11. I will ask you further, doctor, is there any ingredient that you see there that will permanently cure habitual constipation?

A. I make the same answer. I see no ingredient that in my experience would lead me to suppose would have any such action, nor is there any ingredient that I have ever seen that claim made for by any authority.

Q. 12. Then if neither senna or any other ingredient, doctor, would permanently cure habitual constipation, would they, in combination with the various ingredients, bring about, in your judgment, a permanent cure of habitual constipation?

A. They would not, in my judgment.

Q. 13. Then a preparation compounded from those various ingredients, whatever it might be, would not permanently cure habitual constipation?

A. No, sir; not in my judgment.

Q. 14. I will ask you whether or not, in your judgment, senna will aggravate constipation?

A. As far as my experience goes, I believe that it does; I would say when used habitually.

Q. 15. Then, supposing the active cathartic principle being there, if that answer is true, it would reasonably follow, would it not, that any preparation or the preparation compounded from the ingredients which you hold in your hand would have a tendency to aggravate constipation if used in the same way as senna, would it not?

A. Yes, I think that is a logical conclusion.

Q. 16. Doctor, have you ever prescribed the laxative know as "Syrup of Figs"?

A. No, sir.

Q. 17. You know of such a laxative preparation, do you not?

A. Yes, sir.

Q. 18. Do you consider it a standard preparation such as you would prescribe in your practice?

(Objected to as incompetent, irrelevant, and immaterial.)

A. No.

Q. 19. Why not, doctor?

A. Because it is a preparation that being secret, the manufacture of which is being secretly conducted, I can have no knowledge as to its properties or its component parts, and because physicians have a prejudice against such remedies.

Q. 20. Then, in your judgment, it falls in the category of patent or quack medicines, does it not?

A. It is what is known as a patent medicine; yes, sir.

Q. 21. I hand you another paper which has been introduced in evidence in this case and is marked "Respondent's Exhibit No. 5." Will you look at the list of ingredients there, and see whether there is any one or more of the ingredients that will permanently cure habitual constipation?

(Objected to as incompetent, irrelevant, and immaterial, and not in rebuttal of anything offered by the complainant.)

A. No, sir; I see nothing there that I believe would have any such action.

Q. 22. The ingredients seem to be practically the same, do they not? A. Yes, sir.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Doctor, I understand you to say that you never had prescribed "Syrup of Figs"?

A. Yes, sir.

X. Q. 2. You know nothing about it except what you see advertised.

A. Oh, yes; I think every physician has considerable knowledge as to the preparation.

X. Q. 3. He has considerable knowledge as to the preparation?

A. Yes; that is, as to the results and of its popular use by patients of his, in families.

X. Q. 4. You think every physician has a knowledge as to its popular use?

A. I should think most physicians had.

X. Q. 5. Have you any personal knowledge of its use?

A. I have personal knowledge of many of my patients using it.

X. Q. 6. You have never used it yourself?

A. I have never prescribed it nor used it personally.

X. Q. 7. What is your business at the present time, doctor? A. Physician.

X. Q. 8. You are assessor of this city and county?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I am.

X. Q. 9. You were a member of the board of supervisors of this city during the last two years, were you not?

(The same objection.)

A. Yes, sir.

X. Q. 10. Have you prescribed senna in your practice?

A. Yes, many times.

X. Q. 11. What for? A. For constipation.

X. Q. 12. It is looked upon by physicians, is it not, as being a very excellent cathartic?

A. Yes, in certain quantities.

X. Q. 13. It is excellent in one respect because it does not irritate the bowels, is it not?

A. That depends upon the patient and upon the dose.

X. Q. 14. Is there any other cathartic that you know of as good for general use as senna?

A. As good for general use?

X. Q. 15. Yes.

A. Yes, I think there are some cathartics that are better.

X. Q. 16. What are they?

A. What is known as cascara sagrada, or sacred bark.

X. Q. 17. You think that is a better laxative or cathartic than senna? A. In many cases, yes.

X. Q. 18. In many cases? But I am talking about the general use.

A. Well, I would answer that question by saying that chronic constipation is due to so many different causes that it is hard to compare one drug with another, because all fail, in many cases, in a large proportion of cases.

X. Q. 19. I suppose chronic constipation comes from the system not being in its natural state; that is to say, the stomach and bowels do not perform their natural functions.

A. Some cases arise that way, but there are many other causes very different in their nature which produce chronic constipation.

X. Q. 20. Does it not come from an inactive, torpid condition of the stomach and bowels and the digestive organs? A. No, sir.

X. Q. 21. From what other causes does it come?

A. A great many causes. It could come from a mechanical constriction of some part of the bowel, as, for instance, a stricture formed by pressure on the bowel from some enlarged organ which lies outside of it and against it. Many other cases come from incurable diseases, such as cancer, which may effect some part of the gastro-intestinal tract of the stomach and bowels. Many cases entirely dependent upon a diseased liver due to the absence of secretion of bile which prevents a daily movement of the bowels, and many other cases which are so diversified in nature that it becomes folly to speak about any one drug having an extended use in common cases of chronic constipation. Unless you limit the cause to one of a certain category, so far as cause is concerned, no man can give any intelligent testimony.

X. Q. 22. Now, we will limit it to the causes arising from a torpid condition of the bowels and of the digestive organs, eliminating cases where there is outside diseases and outside pressure, and I will ask if in such cases as

that senna is not the best cathartic known to the medical profession?

A. No; I think those that are due to torpor, or atony, which is practically the same condition—lack of tone—are better treated as a routine practice by some other preparations.

X. Q. 23. What other preparations?

A. Well, the principal one I mentioned, and is known popularly as sacred bark. I would like to say, however, as I stated in the first instance, that senna is a standard, and is found to be of great usefulness in treating a great many cases of chronic constipation—so recognized by authorities.

X. Q. 24. Well, isn't it recognized by the profession generally as the best of all drugs for the purpose stated by you in your last answer.

A. That is, for the purpose of what?

X. Q. 25. That is for general use as a cathartic where the constipation does not come from some outside or other source than the condition of the bowels and stomach?

A. No, I could not say that. My impression is that the best cathartic for chronic or habitual constipation, due to atony of the bowels, or a condition of torpor is cascara sagrada, or sacred bark, but I would say that senna is very valuable in cases of chronic constipation, especially in children.

X. Q. 26. That question did not relate to your information, but to the general opinion of the profession.

Mr. ROWE.—And as an answer to the question he

stated that he did not consider that senna was the best, or a permanent remedy.

Mr. OLNEY.—I didn't ask that.

A. I could not say what the opinion of the profession—

X. Q. 27. (Interrupting.)—You are speaking of your own practice now?

A. And of the information of others as to the action of the drugs. What the profession at large might think, I could not say. One finds very many different opinions as to the same drug.

X. Q. 28. Have you had any experience as a pharmacist? A. Yes, sir.

X. Q. 29. Do you know whether or not the methods of preparing senna may have some influence upon its effect and its operation?

A. Do you mean the method of preparing a preparation which consists solely of senna, or its active ingredient, or a combination of other ingredients?

X. Q. 30. I mean where senna is the principal ingredient itself, in combination with other ingredients. Have you had any experience in that direction?

A. Yes, sir.

X. Q. 31. Did you find that any different result is obtained by different methods of treatment of senna with these combinations? A. Yes, sir.

X. Q. 32. Did you find or have you found any difference in the result from different methods of treatment of senna itself?

A. Well, when you say "treatment," what do you mean?

X. Q. 33. Different ways in which the substance of the senna is derived, whether it is an extract, or whether it is given in its original condition, or whatever way it is given, do you find any difference?

A. Do you mean to say does it make any difference as to the results whether you administer senna itself, or some extract derived from senna?

X. Q. 34. Yes, sir.

A. Yes.

X. Q. 35. Suppose you found from that experience that to overcome habitual constipation it is necessary for the patient to take extreme care of his diet.

A. In many cases you cannot correct it unless the patient observes rules as to diet.

X. Q. 36. Isn't it so in all cases except where constipation comes from some disease or cause, like cancer or mechanical obstruction?

A. No, I could not say that is so in all cases. In all cases certain modifications of diet will assist nature in relieving chronic constipation, if that is what you mean.

X. Q. 37. Yes. Now the use of senna and an appropriate course of diet, may it not, in your opinion, overcome habitual constipation, unless that constipation arises from some outside or mechanical cause?

A. No, I could not say that that is true.

X. Q. 38. Could you say that it was true of any medicine?

A. That it would overcome chronic constipation?

X. Q. 39. Yes.

A. Only in a certain percentage of cases; not in all cases.

X. Q. 40. I suppose in such cases it is very important that the habits of the patient should be regular, that he should form regular habits.

A. That is a very important element in habitual or chronic constipation.

Redirect Examination.

(By Mr. ROWE.)

R. Q. 1. Doctor, will any regime or habits or custom used by a patient in connection with the use of a cathartic cure habitual constipation?

A. Well, you might have a case of habitual constipation that could be entirely cured by a marked alteration in the habits and regime of the patient. Of course, in this case, a combination of senna as a drug with that regime would cure the case. But I cannot consider that senna by itself, or that senna in combination with those changes in the mode of the patient, in the mode of his daily living as to diet and habit, would be of predominant efficacy.

R. Q. 2. In other words then the patient would have to be advised as to his diet and his general habits as well as to the remedy that he was taking for habitual constipation, in order to create a permanent cure, would he not? The mere administration of senna alone would not, as I have stated before, effect a permanent cure of habitual constipation?

A. No; I can call to mind no case where I would expect from the use of senna a cure of habitual constipation, but these different things are factors.

R. Q. 3. Now, doctor, I ask you if there is any remedy known to the materia medica, or the profession that will permanently cure habitual constipation.

A. No, sir; not as you use the term "cure" in its broad sense. There is no remedy known to the materia medica, because as I have stated, it depends upon so many different factors that it is folly to expect to remove the condition.

R. Q. 4. Isn't it generally conceded among the profession that cascara sagrada will come as near effecting that result as anything else?

A. I think in many cases it will come nearer to it than any other drug.

Recross Examination.

(By. Mr. OLNEY.)

R. X. Q. 1. Doctor, if a patient adopts regular habits and an intelligent proper system of diet, will not the proper use of senna add materially to overcoming habitual constipation?

A. There is no doubt that while you are using senna you will overcome habitual constipation; if you mean by that that you will overcome it in the sense of overcoming it during the use, in contradistinction of curing it, that is, permanently removing it after the drug is stopped, why then the question is easily answered.

R. X. Q. 2. Well, now you use the term "cure," "cure it permanently"; will it be a material assistance under such circumstances as I have stated in curing the disease permanently?

A. From my experience and from my knowledge of the subject derived from different authorities I have never seen the claim put forward that senna has any effect in curing habitual constipation either alone, or in combination with other measures or drugs. That is, when I say "cured" I mean to remove the condition after the drug is itself discontinued.

R. X. Q. 3. Now, you have not answered my question yet.

A. If you will have it read to me I will try to answer it.

(R. X. Q. 2 read.) It will aid in the overcoming of it while the regime and the medicine is continued, yes.

R. X. Q. 4. Well, will it not result in most cases in a permanent cure?

A. The very methods without the drugs would. I could not say that the drug would assist in the element of cure. It will assist in overcoming it while it is used, but that it will assist in establishing a cure, I could not say that.

R. X. Q. 5. That is, in your opinion, the patient would get along just as well without the medicine if he adopted these habits?

A. Most cases of chronic constipation can be cured without drugs, and are better treated without drugs. When they belong to the class that you are referring to, many cases are cured entirely so.

R. X. Q. 6. But what I want to get at is that the proper use of drugs with a patient in that condition, is beneficial in starting him on the road to recovery. Isn't that a fact?

A. Yes; to start him on the road to recovery.

Examination in chief of

Dr. WILLIAM WATT KERR, a witness called on behalf of respondent; sworn.

(By Mr. ROWE.)

Q. 1. Doctor, will you state your name, age, residence, and occupation?

A. William Watt Kerr; I reside at 1200 Van Ness avenue; am a physician by occupation.

Q. 2. Doctor, I hand you a paper with an analysis of a preparation known as "Syrup of Figs," and will ask you to look over the ingredients in that compound and state whether or not you recognize any one that will permanently cure or overcome habitual constipation?

(Objected to as incompetent, irrelevant, and immaterial, and not in rebuttal of any testimony that has been offered on the part of the complainant, and opening a new issue in the case.)

A. No.

Q. 3. Senna will not do it, will it? A. No.

Q. 4. Senna neither alone nor in combination will do it, will it? A. No.

Q. 5. Then, if your answer is true, it would naturally follow, would it not, that any preparation compounded of these ingredients would not permanently overcome or cure habitual constipation? A. No, sir.

Q. 6. I hand you, doctor, another paper, respondent's Exhibit No. 5, introduced as an exhibit in this case, and will ask to look at that and see if you find any ingredients

there that will permanently overcome or cure habitual constipation? A. No.

Q. 7. Nor would a combination of all together do so, would it? A. No.

Q. 8. Doctor, have you ever heard of a preparation called "Syrup of Figs"? A. Yes, sir.

Q. 9. Did you ever prescribe it in your practice?

A. I have allowed patients to use it; yes, sir.

Q. 10. Did you prescribe it yourself?

A. Well, I never write it. I don't write proprietary articles as a rule, but I have told my patients that they could use it.

Q. 11. What would you prescribe it for if left to yourself, own voluntary counsel, if I may say?

A. I have never written it, but I have told patients they could use it as a domestic medicine, a household medicine.

Q. 12. You say you regard it as a proprietary article?

A. Well, we generally include it as a proprietary article.

Q. 13. You don't know any of the ingredients, do you?

A. Nothing, except I knew that it was a prescription of senna; that is all.

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Doctor, is there any medicine that of itself will permanently cure habitual constipation?

A. Not in all cases.

X. Q. 2. Well, is there any case in which it will do it at all as a medicine, of itself?

A. Some cases; occasionally you do get them.

X. Q. 3. Well, wouldn't it be a very unusual state of affairs?

A. Now, where it is due simply to a loss of tone in the bowels and muscle from some prolonged debilitated condition, you frequently, by restoring the tone to the bowels, right its action.

X. Q. 4. Well, now, suppose one should be in the condition which you would describe as that of habitual constipation, would you not consider a preparation of senna used in connection with a proper system of diet and regular habits, beneficial to overcome the disease?

A. Yes, sir.

X. Q. 5. Wouldn't you say generally that senna is a good material to use in overcoming habitual constipation?

A. I could not answer that generally. If it was simply to be used alone, to be used all the time, where a case had failed to respond to a permanent cure, then I might say that they could take the "Syrup of Figs," and frequently do that, that they could take the "Syrup of Figs" two or three times a week simply for relieving, but not effecting a cure.

X. Q. 6. But it would be a beneficial means in attaining the end sought which is a permanent cure? To use it properly would you not consider a preparation of senna as a legitimate and helpful method of attaining a cure?

A. No; simply for relieving the constipation whilst

the other remedies, whilst a proper dietetic treatment would produce the cure.

X. Q. 7. But even in that case the use of senna is beneficial?

A. It is beneficial under such circumstances; yes, sir.

X. Q. 8. Doctor, I assume, as a matter of common knowledge, that whatever remedy is used for assisting and overcoming disease it is necessary to have a proper diet and regular habits—a disease of this kind—I suppose that is true, isn't it? A. Yes, sir.

X. Q. 9. Now, doctor, assuming that senna is treated in such a way as to deprive it of its griping powers, is it or is it not a good cathartic?

A. It is a good cathartic, yes;

X. Q. 10. It is of use in curing habitual constipation?

A. No.

X. Q. 11. You don't mean to say that it cures it, but it is used as a means in curing it?

A. Oh, it may be used as any other cathartic in cleaning out the bowels.

Examination in chief of

E. C. ZIEG, a witness recalled on behalf of respondent.

(By Mr. ROWE.)

Q. 1. Mr. Zieg, I hand you a paper which is an analysis of "Syrup of Figs." Have you ever seen that paper?

A. Yes, sir.

Q. 2. Did you make that analysis? A. Yes, sir.

Q. 3. You made the analysis of a preparation known

as "Syrup of Figs," manufactured by the California Fig Syrup Company, did you, Mr. Zieg? A. Yes, sir.

Q. 4. And that is the result, on the paper you hold in your hand? A. Yes, sir.

Mr. ROWE.—I introduce that in evidence.

Mr. OLNEY.—We object to it as incompetent, irrelevant and immaterial; as not proper evidence at this stage of the case.

(Marked "Respondent's Exhibit No. 20.")

Cross-Examination.

(By Mr. OLNEY.)

X. Q. 1. Can you by an examination or an analysis of a medicine tell what are all of the ingredients that are in it?

A. Yes, provided they are used in quantities so as to be in any way perceptible to the senses.

X. Q. 2. What do you mean by "perceptible to the senses"?

A. In a great many cases, especially with organic drugs, the senses have to be relied upon in accomplishing results, the sense of taste or the sense of smell.

(Testimony closed.)

I certify that the foregoing depositions were taken at the place stated in the caption to said depositions, at the several times set forth in said depositions, in my presence, and in the presence of counsel for the respective parties to the cause in said caption entitled; that previous to giving his testimony, each of the witnesses in said deposition named was by me duly sworn to tell the truth, the whole

truth, and nothing but the truth, in said cause; that said depositions were taken down in shorthand writing and transcribed by B. C. Brown, pursuant to stipulation and agreement of counsel; that the reading and signing of said depositions, were by agreement of said counsel waived, as in stipulation herein set forth, and that I have retained said depositions for the purpose of delivering the same with my own hand to the Court for which they were taken.

Accompanying said depositions, and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein.

I further certify that I am not attorney nor of counsel for any of the parties in said cause, nor in any way interested in the event thereof.

In witness whereof I have hereunto set my hand this twelfth day of April, 1899.

E. H. HEACOCK,
Examiner in Chancery, United States Circuit Court,
Northern District of California.

[Endorsed]: Filed April 12, 1899. Southard Hoffman,
Clerk, by V. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

CALIFORNIA FIG SYRUP COM- PANY,	} Complainant,	No. 12,378. Monday, June 5, 1899.
vs.		
CLINTON E. WORDEN et al.,	} Respondents.	

Oral Opinion on Final Hearing.

Warren Olney, Esq., Attorney for complainant.

Purcell Rowe, Esq., and John H. Miller, Esq., at-
torneys for respondents.

MORROW, Circuit Judge (orally).—This case is now before the Court, upon the pleadings and the evidence, for a final judgment. When the case was heard upon an application for a preliminary injunction, the Court considered all matters that were then presented, and awarded the preliminary injunction, upon the ground that the complainant had made such a showing by the pleadings and affidavits that it was entitled to an injunction against the sales of Fig Syrup by the defendant. (86 Fed. 212.) The case as now presented supports the allegations of the bill of complaint, and, in my judgment, presents a controversy not very different from the one considered by the Court upon the application for the

injunction. There is some little difference in the arguments and briefs of counsel. A little more of an effort is made by the respondents to impeach the equities of the bill of complaint, and the language of the briefs is a little more vigorous than it was in the preliminary hearing. The complainant is now charged with deception somewhat more specifically than before in the character of the article for which he seeks protection, but I do not discover any different principles involved in the determination of the issues than were originally presented to and considered by the Court.

The complainant produces an article called a "Fig Syrup," or "Syrup of Figs," and from the evidence it appears that it originated the article or preparation produced and extensively sold under that name. It appears from the testimony that the respondents have made an article of similar character, and have put it up in bottles under substantially the same name as complainant's preparation. There are some differences in the matter of labels and the appearance of the bottles, but they are not such differences as would attract the attention of the ordinary purchaser. That is to say, if a person desired to purchase a bottle of California "Fig Syrup," or "Syrup of Figs," prepared by the complainant, there would be no difficulty in selling to such a purchaser the article prepared by the respondents. Under the law, as it has been recently construed by the Court, the complainant in such a case is entitled to be protected from such an unfair competition. The Courts have been advancing with respect to this question of protecting persons in their legitimate business enterprises from the appropriation of

others. They will restrain persons who are engaged in what is called unfair competition in trade, and will prevent them from appropriating the fruits of skill and enterprise of others.

“Irrespective of any question of trademarks, rival manufacturers have no right, by imitative devices, to beguile the public into buying their wares under the impression that they are buying those of their rivals.”

Coates v. Merrick Thread Co., 149 U. S. 562.

The respondents contend that this case involves only a question of trademark. But on the part of the complainant it is claimed that this is not merely a trademark case, but that it goes further, and involves unfair competition, wherein the respondents hope to trade upon the reputation of the complainant's preparation. The cases where this article has been in controversy in other circuits appear to have turned upon the question of whether or not there was an infringement of the complainant's trademark. But in this circuit the Circuit Court of Appeals, in the case of the Improved Fig Syrup Co. v. California Fig Syrup Co., 54 Fed. 175, has, in my judgment, determined that this complainant is entitled to be protected, not only in its trademark, but in its business, in the production and sale of this particular article, as a “liquid laxative medicine,” and that the production by any other person of a compound that could be sold to the ordinary purchaser as complainant's compound is an infringement of the business of the complainant in the sale of the article. I so construe the opinion of the Circuit Court of Appeals in the case cited, and I feel that I must follow that construction in entering a final judgment in

this case. I may say, further, that I am satisfied with that opinion. It seems to me to be supported by recent cases in the Seventh Circuit, as well as in England, where articles not more meritorious than this article, in the exclusive right claimed for a name, have been fully protected by the courts from unfair competition in the sale of articles under similar names.

It is said with much earnestness on behalf of the respondents in this case, that the complainant's claim for its California "Fig Syrup" that it permanently overcomes habitual constipation is not justified by the evidence, and for that reason the claim should be treated as fraudulent or deceptive, and that, therefore, the complainant has not come into a Court of equity with clean hands. The effect of any medicine to permanently relieve constipation is, as I understand it, largely a matter dependent upon the constitution and habits of the person treated. It is not an absolute fact that any medicine permanently relieves the disorder. The practice of medicine differs in this respect from the practice of surgery. In surgery, when a limb is cut off or a tumor removed, the effect is positive and certain, but medicine is administered to assist nature in regaining its normal condition. I do not understand that medicine alone produces a permanent cure in such ailments as pertain to the natural functions. It is rather that medicine assists in securing relief. And while a person afflicted with permanent or chronic constipation could probably not be cured by merely taking "Fig Syrup," neither could he be by taking any of the other preparations mentioned in the testimony of the physicians. These remedies are intended to assist nature in re-

moving disorder from the system, and that is all that can be said of any of them. It follows that the objection urged by the respondents that complainant's preparation does not produce the effect claimed for it is not, under the circumstances, an objection that can be entertained as establishing the complainant's preparation as fraudulent and deceptive. It may not possess all the virtues claimed for it, but I am not prepared to say that the complainant is engaged in preparing and selling an article under the cover of false and fraudulent representations. In my opinion, it is as much entitled to the protection of the court as the "Hunyadi Janos Water," in *Saxlehner v. Apollinaris Company*, 1 Ch. Div. (1897) 893; 13 *Times Law Rep.* 258; the "Red Cross Plaster," in *Johnson v. Bauer*, 82 Fed. 662; "Baker's Chocolate," in *Walter Baker & Co. v. Sanders*, 80 Fed. 889; or the "Chicago Waists," in *Gage-Downs Co. v. Featherbone Corset Co.*, 83 Fed. 213.

I shall, therefore, direct that an interlocutory decree be entered in this case in favor of the complainant, and the usual reference to the Master.

[Endorsed]: Filed June 5, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

CALIFORNIA FIG SYRUP CO. (a Cor-
poration),

Complainant,

vs.

CLINTON WORDEN & CO. (a Corpora-
tion), J. A. BRIGHT, T. F. BACON,
E. LITTLE, C. J. SCHMELZ and
LUCIUS LITTLE,

Defendants.

No. 12,378.

**Interlocutory Decree with Reference to Master to Ascertain
Profits and Damages.**

At a stated term, to wit, the March term, 1899, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on the fifth day of June, 1899. Present: the Honorable W. W. MORROW, Circuit Judge.

This cause having come on to be heard upon the bill of complaint herein, the answer of the defendants, the replication of the complainant, and the proofs, documentary and written, taken and filed in said cause, and having been argued by counsel for the respective parties, and submitted to the Court for consideration and decision,

Now, therefore, on consideration thereof, it is ordered, adjudged and decreed, and the Court doth hereby order, adjudge and decree as follows, to wit:

That the name or term "Syrup of Figs" or "Fig Syrup" was first applied by R. E. Queen, the predecessor of complainant, to a liquid laxative medicine, and, since the year 1879, the complainant and its said predecessor, R. E. Queen, have used the said name as the designation of a liquid laxative medicine. That said medicine has become known in the drug trade, among physicians, and by the public generally, as "Syrup of Figs" or "Fig Syrup," and, whenever said term is used in the drug trade or by other persons, the complainant's said preparation is understood to be referred to. That large quantities of said medicine have been sold under said name, and the business of complainant in preparing and selling said medicine is very extensive and valuable.

That the defendant, Clinton E. Worden & Co., has manufactured, and all the defendants have sold, a laxative medicine marked with said name, in imitation of the name used by complainant, and for the purpose of and with the design and intent of inducing purchasers to buy defendant's said preparation instead of the complainant's. That by so doing the said defendants, and each and all of them, have infringed upon the exclusive right of the complainant to the use of the name "Syrup of Figs" or "Fig Syrup," as applied to a liquid laxative medicine, and, prior to the commencement of this suit, said defendant, Clinton E. Worden & Co., has manufactured, and the other defendants herein have sold, said preparation made by the said Clinton E. Worden & Co. in imitation of complain-

ant's medicine, in large quantities, and have placed, in plain, conspicuous letters thereon, in imitation of the complainant's labels, the name "Syrup of Figs" and "Fig Syrup," as charged in the bill of complaint.

And it is further ordered, adjudged and decreed that the complainant do have and recover of and from the said defendants, Clinton E. Worden & Co., a corporation, J. A. Bright, T. F. Bacon, E. Little, C. J. Schmelz and Lucius Little, the profits, gains and advantages which said defendants, or either of them, have received or made, or which have arisen or accrued to them, or either of them, from the infringement of the rights of complainant by using said name, and by the making, using and selling, or the making; using or selling, of said liquid laxative medicine, having placed thereon the name "Syrup of Figs" or "Fig Syrup," or any other name in imitation of complainant's said medicine.

And it is further ordered, adjudged and decreed that the said complainant do recover of the defendants its costs and charges and disbursements in this suit, to be taxed.

And it is further ordered, adjudged and decreed that it be referred to E. H. Heacock, Esq., the standing Master in Chancery of this Court, residing in the city and county of San Francisco, Northern District of the State of California, to ascertain and take and state and report, and report to this Court an account of the liquid laxative medicine manufactured and sold by each of the defendants above named, and also the gains, profits and advantages which the said defendants, or either of them, have received or made, or which have arisen or accrued to

them, or either of them, or it, from infringing the said exclusive rights of the said complainant by the manufacturing, selling, or manufacturing or selling of a liquid laxative medicine stamped with the name "Syrup of Figs" or "Fig Syrup."

And it is further ordered, adjudged and decreed that the complainant on such accounting have the right to cause an examination of the defendants and each of them, and their and each of their agents, servants and workmen, or other witnesses as may be necessary to take said accounting, and also the production of books, vouchers and documents of which said defendants, and their and each of their attorneys, agents and workmen may be possessed, and cause them to attend for such purpose before the said Master from time to time as such Master may direct.

And it is further ordered, adjudged and decreed that the said Master shall segregate and separately state the gains, profits and advantages which each of the said defendants has received or made on account of his or its infringement of the said rights of complainant.

And it is further ordered, adjudged and decreed that a perpetual injunction be issued in this case against the said defendants, Clinton E. Worden & Co. (a corporation), J. A. Bright, T. F. Bacon, E. Little, C. J. Schmelz, and Lucius Little, restraining and perpetually enjoining them and each of them, and their and each of their servants, agents, clerks and workmen, and all persons claiming or holding under or through them, from making, manufacturing, or using or selling, or offering for sale, or in any way disposing of a liquid laxative medicine or preparation under the name "Syrup of Figs" or "Fig Syrup," or under

any name in colorable imitation of the name "Syrup of Figs," and from making, selling, or offering for sale, directly or indirectly, any medical liquid, laxative preparation put up in bottles, boxes, or packages similar in form and arrangement to the bottles or packages used by complainant in the manufacture and sale of its said liquid laxative preparation, or so closely resembling the bottles or packages used by complainant as to be calculated to deceive the public, and from using the name "Fig Syrup Company," and from using a name whereof the words "Fig Syrup" or "Syrup of Figs Company" form a part as a business name in connection with the manufacture of a liquid laxative preparation, pursuant to the prayer of the said bill of complaint.

WM. W. MORROW,
Judge.

[Endorsed]: Filed and entered June 7, 1899. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Northern District of California, Ninth Circuit.*

CALIFORNIA FIG SYRUP COM-
PANY (a Corporation),

Complainant,

vs.

CLINTON E. WORDEN & COMPANY
(a Corporation) et al.,

Respondents.

Petition for Allowance of Appeal.

The above named respondents, conceiving themselves aggrieved by the decision and decree made by this Court on the fifth day of June, 1899, in the above entitled cause, do hereby appeal from the said decision, order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and complainants pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order, decision, and decree were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. The decision, order, and decree complained of by the respondents, and from which this appeal is taken, is the decision, order, and decree of this Court.

And your petitioner will ever pray, etc.

Dated June 28, 1899.

PURCELL ROWE,
Attorney for Respondents.

JOHN H. MILLER,
Of Counsel.

[Endorsed]: Filed July 5, 1899. Southard Hoffman,
Clerk, by W. B. Beazley, Deputy Clerk.

Order Allowing Appeal.

The foregoing petition being filed and presented to the Court, in open Court, it is now ordered by the Court that the appeal as prayed for be allowed, that an order of Court be entered accordingly, and that a bond for costs on appeal in the sum of five hundred (\$500) dollars be filed herein, and that a citation do issue accordingly.

Dated July 5, 1899.

WM. W. MORROW,
Judge.

[Endorsed]: Filed July 5, 1899. Southard Hoffman,
Clerk, by W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, in and for the
Northern District of California, Ninth Circuit.*

CALIFORNIA FIG SYRUP COM- PANY (a Corporation),	}	Complainant,
vs.		
CLINTON E. WORDEN & COMPANY (a Corporation) et al.,	}	Respondents.

Assignment of Errors.

Now comes Clinton E. Worden & Company, respondent and appellant herein, by Purcell Rowe, Esq., and John H. Miller, Esq., their counsel, and specify the following as errors upon which they will rely and which they will urge on their appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the final decree heretofore made and entered in the above-entitled cause in the Circuit Court of the United States for the Northern District of California, on the fifth day of June, A. D. 1899.

The honorable the Circuit Court erred:

I.

In granting and continuing an injunction so far as it relates to the words "Syrup of Figs" or "Fig Syrup" to be used for a liquid, laxative, medicinal compound.

II.

In granting and continuing an injunction so far as it related to the making, using and selling any liquid, laxative medicine marked with the name "Syrup of Figs" or "Fig Syrup."

III.

In holding that the complainant is entitled to a trademark in the name "Syrup of Figs" or "Fig Syrup," as applied to a liquid, laxative, medicinal compound.

IV.

In holding that the use of the name "Syrup of Figs" or "Fig Syrup" by respondent, upon respondent's liquid, laxative, medicinal compound, is unfair competition by respondent with complainant's business.

V.

In not holding that the name "Syrup of Figs" or "Fig Syrup" is descriptive, and, if not descriptive, is deceptively used by complainant with the intent and purpose of deceiving the public, and that the public are so deceived.

VI.

In not holding that the packages and advertisements of complainant represent that complainant's preparation is a laxative fruit syrup, made from the juice of the California fig.

VII.

In not holding that the ordinary purchaser believes when purchasing complainant's article that he is buying

a laxative the essential ingredient of which is the California fig.

VIII.

In not holding that the ordinary purchaser would be deceived to his harm by the statements on complainant's advertisements and packages.

IX.

In not holding that there were material misrepresentations in the name of complainant's preparation and on complainant's labels, bottles, and packages and advertising matter.

X.

In holding that the name "Syrup of Figs" or "Fig Syrup" is a name known to the drug trade, to the medical profession, and the public as meaning only the preparation of complainant.

XI.

In holding that respondent had been guilty of fraud and deceit, in giving the name "Syrup of Figs" or "Fig Syrup" to its preparation.

XII.

In holding that complainant invented the name "Syrup of Figs" or "Fig Syrup."

XIII.

In holding the equities in this case in favor of complainant and against respondent.

XIV.

In holding that the testimony shows that respondent had, and could have, no other object in adopting for its preparation the name "Syrup of Figs" or "Fig Syrup" than to trade upon the popularity of complainant's preparation, to defraud complainant of the fruit of complainant's skill, labor and expenditure in establishing a reputation for complainant's preparation, and to pass off respondent's preparation as that of complainant, and to trade on complainant's advertising and the goodwill of complainant's business, by unfair competition, and that nothing appears from which the Court can find that complainant has been guilty of moral wrong as to deprive it of the protection of a Court of equity.

XV.

In entering the interlocutory decree in favor of the complainant herein for an injunction.

XVI.

In ordering an injunction against the respondent.

In order that the foregoing assignment of errors may be and appear of record, the respondent presents the same to the Court, and prays that such disposition be made thereof as is in accordance with the law and the statutes of the United States in such cases made and provided,

and respondent prays a reversal of said interlocutory decree.

Dated twenty-eighth June, 1899.

PURCELL ROWE,
Attorney for respondent.

JOHN H. MILLER,
Of Counsel.

[Endorsed]: Filed July 5, 1899. Southard Hoffman,
Clerk, by W. B. Beazley, Deputy Clerk.

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*In the Circuit Court of the United States, in and for the
Northern District of California, Ninth Circuit.*

CALIFORNIA FIG SYRUP COM-
PANY (a Corporation),

Complainant,

vs.

CLINTON E. WORDEN & COMPANY
(a Corporation) et al.,

Respondents.

Order Allowing Appeal and Approving Bond.

Upon consideration of petition of respondents herein, this day filed and presented to the Court, praying for an allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decision and order of the Court heretofore passed on the fifth day of

June, 1899, and from the decree formally entered therein on the seventh day of June, 1899, the respondents presenting now likewise their assignments of error on the said appeal, which assignments of error have been duly filed herein;

It is now by the Court ordered that the said appeal as prayed for be, and it is hereby, allowed, and it is ordered that the respondents cause to be filed, with one or more sureties, a good and sufficient bond for costs on appeal in the sum of five hundred (\$500) dollars, and the respondents now presenting such bond, with _____ as surety thereon, it is now by the Court ordered that the same be, and it is hereby approved, and it is now ordered that citation upon the appeal do issue accordingly.

Dated July 5, 1899.

WM. W. MORROW,
Judge.

[Endorsed]: Filed July 5, 1899. Southard Hoffman,
Clerk, by W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States, of the Ninth Judicial Circuit, Northern District of California.

CALIFORNIA FIG SYRUP COMPANY (a Corporation), vs. CLINTON E. WORDEN & CO. (a Corporation, J. A. BRIGHT, T. F. BACON, E. LITTLE, C. J. SCHMELZ, and LUCIUS LITTLE,	}	Complainant, Defendants.	No. 12,378.
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Certificate to Transcript on Appeal.

I, Southard Hoffman, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing pages, numbered from one to five hundred and ninety-six, inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled cause (excepting therefrom the complainant's Exhibits, "A," "B," "D," "E," "F," "G," "H," "I," "U," and "V"; Respondents' Exhibits Nos. 1, 2, 3, 4, and 12—being exhibits of material—complainant's Exhibits "C," "C¹," "C²," "C³," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," and "W," and respondents' Exhibits Nos.

Ninth Circuit, Northern District of California, in a certain action numbered 12,378, wherein Clinton E. Worden & Co. (a corporation), J. A. Bright, T. F. Bacon, E. Little, C. J. Schmelz, and Lucius Little are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. W. MORROW, Judge of the United States Circuit Court, Ninth Circuit, Northern District of California, this fifth day of July, A. D. 1899.

WM. W. MORROW,
Judge.

Service of within citation and receipt of a copy thereof is hereby admitted this fifth day of July, 1899.

OLNEY & OLNEY,
Attorneys for complainant.

[Endorsed]. No. 12,378. Circuit Court of the United States, Ninth Circuit, Northern District of California. California Fig Syrup Co. (a corporation), complainant, vs. Clinton E. Worden & Co. (a corporation) et al., defendants. Citation.

Filed July 6, 1897. Southard Hoffman, Clerk.

[Endorsed]: No. 564. United States Circuit Court of Appeals, for the Ninth Circuit. Clinton E. Worden & Co. (a corporation), J. A. Bright, T. F. Bacon, E. Little, C. J. Schmelz, and Lucius Little, appellants, vs. California Fig Syrup Company (a corporation), appellee. Transcript of

Record. Appeal from the United States Circuit Court,
Ninth Judicial Circuit, in and for the Northern District
of California.

Filed Oct. 30, 1899.

FRANK D. MONCKTON,

Clerk.

By Meredith Sawyer,

Deputy Clerk.

EXHIBITS.

Complainant's Exhibit "C."

SYRUP OF FIGS

ACTS GENTLY
ON THE

**KIDNEYS, LIVER
AND BOWELS**

**CLEANSSES THE SYSTEM
EFFECTUALLY.**

**DISPELS
COLDS
HEADACHES
& FEVERS**

**OVERCOMES
HABITUAL CONSTIPATION
PERMANENTLY.**

**ONE ENJOYS
SYRUP OF FIGS.**

TO GET

ITS BENEFICIAL EFFECTS

BUY THE GENUINE-MANFD BY THE

CALIFORNIA FIG SYRUP CO.



FOR SALE BY ALL

DRUGGISTS

CHAS. G. GRAY

United States Circuit Court, Northern District of California. Cal. Fig. Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit "C." E. H. H., Examiner.

Filed April 12, 1899. Exhibit "C." Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit "C."

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "C1."

[The Evening Post, Louisville, Wednesday, April 22, 1896.]

WELL KNOWN AND INTERESTING.

It is well known to all intelligent people that the few world-renowned remedies which have stood the test of time and grown constantly in favor with the most eminent physicians, and with the public generally, have everything to gain and nothing to lose by giving to the world a thorough knowledge of the source of their active principles, as it is equally well known that the great reputation of such remedies is due not only to the excellence of the combination, but also to the skillful methods employed by the manufacturers in producing it.

For many years past the CALIFORNIA FIG SYRUP CO. has proclaimed to the world the fact that the laxative and carminative principles of its remedy, named Syrup of Figs, are obtained by a method of its own from an excellent combination of

SENNA AND OTHER AROMATIC PLANTS

known to act most beneficially on the system, and that a very small quantity of the juice of figs is used, merely to promote the pleasant taste of the combination.

It is well known that many fruits are wholesome as foods, but that, being nutritious, the juice of such fruits may be used in large quantities as food, and that when used in medicinal compounds the quantity taken is so small as to have no medicinal value. The name Syrup of Figs was given to the laxative remedy manufactured by the California Fig Syrup Co. merely as a trade name, and the satisfaction which the remedy has given to millions of people, and its constant growth in favor with the most eminent physicians, and with millions of families, is ample evidence of the excellence of the plants used in the combination, and of the scientific method and exceptional facilities of the California Fig Syrup Co. for manufacturing the most perfect laxative known.

Owing to the valuable reputation which the laxative remedy named Syrup of Figs and manufactured by the California Fig Syrup Co. has obtained many imitations have been offered to the public, which are sold under similar names, but which have not the merits of the original remedy, and therefore should be avoided. As some imitations claim to obtain medicinal virtues from fruits, notwithstanding the above facts, it is more than ever important to the California Fig Syrup Co. to have the public know and understand that the true and original remedy, named Syrup of Figs, is manufactured from an excellent combination of laxative and carminative plants, combined with a very small quantity of the juice of figs, and that the company does not claim, and has never claimed, to obtain the medicinal properties of the remedy from figs.

The great majority of druggists are too honorable to offer imitations to their customers. They know the importance of standard medicinal agents, manufactured by successful and world-renowned manufacturing chemists, and are willing to make great sacrifices to supply their customers with the highest products of modern science, and they know that the name of the California Fig Syrup Co. is a guarantee of the excellence of the laxative remedy which it manufactures, and therefore will not sell imitations, but some dealers who have no regard for the quality of medicinal compounds, and desire to make the largest profit possible, are constantly endeavoring to sell the imitations. A well-informed public is able to protect itself against such imposition. The trouble with the imitations is not always a failure to act on the system, but that they sometimes act too violently; and when taken for any length of time they invariably tend to require constantly augmented doses, and in that way permanently injure the system. On the other hand, the laxative remedy named Syrup of Figs, and manufactured by the California Fig Syrup Co., acts naturally and gently on the system, and has a strengthening and refreshing effect, so that it is permanently beneficial and may be taken or discontinued as desired.

Always note the full name of the Co. printed on the front of each package when purchasing, as well as the name, Syrup of Figs.

CALIFORNIA FIG SYRUP CO.

Louisville, Ky.

San Francisco, Cal.

New York, N. Y.

United States Circuit Court, Northern District of California. California Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit C 1. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit C 1.

Received October 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "K."

[From "The Annals of Hygiene," December, 1893.]



with pure white sugar, the laxative which is now so well and favorably known under the trade name of "Syrup of Figs." With the exceptional facilities, resulting from long experience and entire devotion to the one purpose of making our product unequalled, this demand for the perfect laxative

The Demand For

a pleasant and effective liquid laxative has long existed—a laxative that would be entirely safe for physicians to prescribe for patients of all ages—even the very young, the very old, the pregnant woman, and the invalid—such a laxative as the physician could sanction for family use because its constituents were known to the profession and the remedy itself had been proven to be prompt and reliable in its action, as well as pleasant to administer and never followed by the slightest debilitation. After a careful study of the means to be employed to produce such

A Perfect Laxative

the California Fig Syrup Company manufactured, from the juice of True Alexandria Senna and an excellent combination of carminative aromatics

is met by Our Method

of extracting the laxative properties of Senna without retaining the griping principle found in all other preparations or combinations of this drug. This method is known only to us, and all efforts to produce cheap imitations or substitutes may result in injury to a physician's reputation, and will give dissatisfaction to the patient; hence, we trust that when physicians recommend or prescribe "Syrup of Figs" (Syr. Fici Cal.) they will not permit any substitution. The name "Syrup of Figs" was given to this laxative, not because in the process

of Manufacturing

a few figs are used, but to distinguish it from all other laxatives, and the United States Courts have decided that we have the exclusive right to apply this name to a laxative medicine. The dose of

"SYRUP OF FIGS"

as a laxative is one or two teaspoonfuls given preferably before breakfast or at bed time. From one-half to one tablespoonful acts as a purgative, and may be repeated in six hours if necessary.

"Syrup of Figs" is never sold in bulk. It is put up in two sizes to retail at fifty cents and \$1.00 per bottle, and the name "Syrup of Figs" as well as the name of the California Fig Syrup Company is printed on the wrappers and labels of every bottle.

CALIFORNIA FIG SYRUP COMPANY

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. California Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit K. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit K.

Received October 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "L."

[From "Food," a Journal of Hygiene and Nutrition, February, 1893.]

**THE DEMAND FOR**

a pleasant and effective liquid laxative has long existed—a laxative that would be entirely safe for physicians to prescribe for patients of all ages—even the very young, the very old, the pregnant woman and the invalid—such a laxative as the physician could sanction for family use because its constituents were known to the profession and the remedy itself had been proven to be prompt and reliable in its action, as well as pleasant to administer, and never followed by the slightest debilitation. After a careful study of the means to be employed to produce such

A PERFECT LAXATIVE

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IS MET BY OUR METHOD

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OF MANUFACTURING

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as a laxative is one or two teaspoonfuls given preferably before breakfast or at bed time. From one-half to one tablespoonful acts as a purgative, and may be repeated in six hours if necessary.

"Syrup of Figs" is never sold in bulk. It is put up in two sizes, to retail at fifty cents and \$1.00 per bottle, and the name "Syrup of Figs," as well as the name of the California Fig Syrup Company, is printed on the wrappers and labels of every bottle.

CALIFORNIA FIG SYRUP COMPANY,

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. California Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit L. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beaizley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit L.

Received October 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "M."

[From "The Dietetic and Hygienic Gazette," February, 1894.]

ii.

THE DIETETIC AND HYGIENIC GAZETTE.



THE DEMAND FOR

a pleasant and effective liquid laxative has long existed—a laxative that would be entirely safe for physicians to prescribe for patients of all ages—even the very young, the very old, the pregnant woman and the invalid—such a laxative as the physician could sanction for family use because its constituents were known to the profession and the remedy itself had been proven to be prompt and reliable in its action, as well as pleasant to administer, and never followed by the slightest debilitation. After a careful study of the means to be employed to produce such

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CALIFORNIA FIG SYRUP COMPANY,

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. Cal. Fig. Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit "M." E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit "M."

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "N."

[From "Humanity and Health," December, 1894.]



THE DEMAND FOR

a pleasant and effective liquid laxative has long existed—a laxative that would be entirely safe for physicians to prescribe for patients of all ages—even the very young, the very old, the pregnant woman and the invalid—such a laxative as the physician could sanction for family use because its constituents were known to the profession and the remedy itself had been proven to be prompt and reliable in its action, as well as pleasant to administer, and never followed by the slightest debilitation. After a careful study of the means to be employed to produce such

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CALIFORNIA FIG SYRUP COMPANY,

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. California Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit N. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit N.

Received October 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "O."

[From "The American Journal of Medical Sciences," June, 1894.]



The Demand For

a pleasant and effective liquid laxative has long existed—a laxative that would be entirely safe for physicians to prescribe for patients of all ages—even the very young, the very old, the pregnant woman, and the invalid—such a laxative as the physician could sanction for family use because its constituents were known to the profession and the remedy itself had been proven to be prompt and reliable in its action, as well as pleasant to administer and never followed by the slightest debilitation. After a careful study of the means to be employed to produce such

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CALIFORNIA FIG SYRUP COMPANY

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. Cal. Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit "O." E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals, for the Ninth Circuit. Complainant's Exhibit "O."

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "P."

[From "The Trained Nurse and Hospital Review," December, 1894.]



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"Syrup of Figs" is never sold in bulk. It is put up in two sizes to retail at fifty cents and \$1.00 per bottle, and the name "Syrup of Figs" as well as the name of the California Fig Syrup Company is printed on the wrappers and labels of every bottle.

CALIFORNIA FIG SYRUP COMPANY

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. California Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit P. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit P.

Received October 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "Q."

[From "American Analyst," December, 1893.]



THE DEMAND FOR

a pleasant and effective laxative has long existed—a laxative that would be entirely safe for physicians to prescribe for patients of all ages—even the very young, the very old, the pregnant woman and the invalid—such a laxative as the physician could sanction for family use because its constituents were known to the profession and the remedy itself had been proven to be prompt and reliable in its action, as well as pleasant to administer, and never followed by the slightest debilitation. After a careful study of the means to be employed to produce such

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OF MANUFACTURING

a few figs are used, but to distinguish it from all other laxatives, and the United States Courts have decided that we have the exclusive right to apply this name to a laxative medicine. The dose of

"SYRUP OF FIGS."

as a laxative is one or two teaspoonfuls given preferably before breakfast or at bed time. From one-half to one tablespoonful acts as a purgative, and may be repeated in six hours if necessary.

"Syrup of Figs." is never sold in bulk. It is put up in two sizes, to retail at fifty cents and \$1.00 per bottle, and the name "Syrup of Figs," as well as the name of the California Fig Syrup Company, is printed on the wrappers and labels of every bottle.

CALIFORNIA FIG SYRUP COMPANY,

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. California Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit Q. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit Q.

Received October 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "R."

[From "Jenness Miller Monthly," March, 1895.]



Copyrighted.

exceptional facilities for production this demand

THE DEMAND FOR

a pleasant and effective liquid laxative has long existed—a laxative that would be entirely safe for physicians to prescribe for patients of all ages—even the very young—the very old—the pregnant woman and the invalid—such a laxative as the physician could sanction for "household use" because its constituents were known to the profession, and the remedy itself had been proven to be prompt and reliable in its action, as well as pleasant to administer and never followed by the slightest debilitation. After a careful study of the means to produce

A PERFECT LAXATIVE

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IS MET BY OUR METHODS

of extracting the laxative properties of Senna without retaining a trace of the griping principle found in all other preparations or combinations of this drug. This method is known only to us, and all efforts to produce cheap imitations or substitutes have failed; hence, we trust that when buying Syrup of Figs (Syr. Fici Cal.) the purchaser will not permit any substitution. The name Syrup of Figs was given to this laxative not because in the process

OF MANUFACTURING SYRUP OF FIGS

a few figs are used, but to distinguish it from all other laxatives. The dose of Syrup of Figs as a laxative is one or two teaspoonfuls given preferably before breakfast or at bed time. From one-half to one tablespoonful acts as a purgative, and may be repeated in six hours if necessary.

Syrup of Figs is never sold in bulk. It is put up in two sizes to retail at .50 and \$1.00 per bottle, and the name Syrup of Figs, as well as the name of the California Fig Syrup Company, is printed on the wrappers and labels of every bottle.

CALIFORNIA FIG SYRUP COMPANY,

SAN FRANCISCO, CAL.

LOUISVILLE, KY.

NEW YORK, N. Y.

United States Circuit Court, Northern District of California. Cal. Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit "R." E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beaizley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals, for the Ninth Circuit. Complainant's Exhibit "R."

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "T."

E. H. H.

Examiner

A Family Laxative.

Physicians are not inclined to recommend self medication to the laity. Yet there is one need which they are almost unable to supply. We refer to the "family laxative." The family physician is able to prescribe for the most complicated and obscure of maladies and yet is often puzzled to know just what to give when asked for a remedy which can be kept in the house for family use as a laxative, that shall be effective, free from danger, and not unpleasant to take. When absent on our summer vacation we were asked by four different parties, representing as many families, what we thought of the "Syrup of Figs." Not one word did we volunteer on the subject, and we were somewhat surprised to find that there was this small token of the very general use of that preparation. These parties said they derived more benefit from it and found it more pleasant to take than anything of the kind they had ever used. The simple question with them was, is it a dangerous compound? We informed them that its active ingredient was a preparation of senna, and that it was entirely free from danger. With this assurance they volunteered the information that they should continue to keep it in the house.

The therapeutical properties of senna are so well known that comment on this seems unnecessary. It might be well to notice, however, that Bartholow says it is "a very safe and serviceable cathartic," and that it is "highly prized as a remedy for constipation." He also makes the important observation that its use "is not followed by intestinal torpor and constipation."

The simple truth of the matter is, we have altogether too few preparations which we can recommend to our families as effective laxatives. But the California Fig Syrup company has one of the most desirable combinations for this purpose with which we are familiar. The Fig Syrup company gives to the profession the composition of this preparation, therefore there is no secret about it; the persons who use this laxative speak in the highest terms about it; and we are pleased to notice that a large number of physicians are prescribing it.

Viewed from the narrowest and most selfish standpoint the physician will lose nothing by recommending such a preparation as Syrup of Figs to his patients; while viewed from the highest standpoint of doing the best possible by those who place themselves in our care, we would say the profession cannot do better than give their indorsement to such a preparation.—American Analyst.

United States Circuit Court, Northern District of California. Cal. Fig Syrup Co. vs. C. E. Worden & Co. et al. No. 12,378. Complainant's Exhibit "T." E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beaizley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals, for the Ninth Circuit. Complainant's Exhibit "T."

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "W."

[From "The Cleveland Press," Tuesday, April 12, 1898.]



Important Happenings

When one learns of the qualities which commend an article of general favor, valuable information is acquired and in recognition of the fact, the California Fig Syrup Co. has continuously published, for many years past, that it obtains, by a method of its own, the medicinal laxative virtues of the choicest selections of senna and combines them with an excellent combination of aromatic carminatives, to form the pleasant and effective family remedy—Syrup of Figs. This remedy is so well and favorably known and has given such universal satisfaction throughout the world that it is interesting to note the above facts, also the statement which we make, and have always made, that the medicinal virtues and distinctive flavoring of the remedy are obtained from plants and not from figs, as figs are simply a food, and only a very small quantity of the juice of figs is used in the combination, to promote the pleasant taste, somewhat as one adds a little sugar to coffee or tea, not to give strength or flavor to the coffee or tea, but to make it more palatable, and with this difference, that coffee and tea are used as pleasant beverages, while Syrup of Figs, manufactured by the California Fig Syrup Co., is a most excellent medicinal laxative and always sold and used as such.

Knowing the above facts, leading physicians have recommended and millions of families have used this excellent family remedy, and it will always be known by the name of Syrup of Figs, or California Fig Syrup, as it is frequently called, as the genuine article is manufactured by the California Fig Syrup Co. only. But there are many imitations manufactured by unscrupulous parties and sold under similar names, and, therefore, it is important always to note, not only the name of the remedy—Syrup of Figs—but also the full name of the Company—California Fig Syrup Co.—printed on the front of every package. The imitations are made from cheap medicated teas and contain narcotics and other injurious substances. The imitations act strongly, and the longer one takes them the greater the injury done. They are manufactured by houses known as "non-secret" manufacturers, because it is no secret to the trade that they are engaged in defrauding the public. As you value your health, beware of the imitations and to get the beneficial effects of the genuine remedy remember the full name of our Company—

CALIFORNIA FIG SYRUP CO.,

San Francisco, Cal.

Louisville, Ky.

New York, N. Y.



United States Circuit Court, Northern District of California. Cal. Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Complainant's Exhibit "W." E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

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Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Respondents' Exhibit No. 5.

COPY.

50 lbs. Alexandria Senna.

22 gall. Hot Water.

100 lbs. Sugar.

2 oz. Cinnamon Oil.

2 " Clove "

2 " Anise "

2 gall. Alcohol.

Hot water poured over the Senna and stands two hours before it is pressed; the alcohol and oils are then added. It stands twenty-four hours and then it is strained; the sugar is then added.

Ground Ginger is thrown between the layers of the Senna and pressed with the leaves together, it prevents griping.

2 lbs. to gall.

U. S. Circuit Court, N. Dist. of Cal. Cal. Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Respondents' Exhibit No. 5. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beaizley, Deputy Clerk.

No. 564. U. S. Circuit Court of Appeals, for the Ninth Circuit. Respondents' Exhibit No. 5.

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Respondents' Exhibit No. 6.

LAXATIVE FIG SYRUP.

{ R.
 { Page
 { Book

R

Chopped Figs.....	10 lb. av
Ground Senna.....	180 lb. av.
Ground Hyoseyamus.....	3 lb. av.
Alcohol 32 per cent.,.....	Q. S. to percolate 30 gals.
Oil Peppermint.....	4 fl. ozs.
“ Cloves.....	3 fl. ozs.
“ Cassia.....	1 fl. oz.
“ Anise.....	1 fl. oz.
Sol. Ess. Ginger.....	1½ pints.
Sugar	200 lbs.
<hr/>	
Water to make.....	45 gals.

	3 g. in 45	
	1 “	
4 lbs. to gall.	<hr/>	128

U. S. Circuit Court, N. Dist. of Cal. Cal. Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Respondents' Exhibit No. 6. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. U. S. Circuit Court of Appeals, for the Ninth Circuit. Respondents' Exhibit No. 6.

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Respondents' Exhibit No. 13.

Reno Evening Gazette.

VOL XXXVI RENO, WASHOE COUNTY, NEVADA. SATURDAY, NOVEMBER 19, 1898. NO 43

MISCELLANEOUS.



THE EXCELLENCE OF SYRUP OF FIGS

is due not only to the originality and simplicity of the combination, but also to the care and skill with which it is manufactured by scientific processes known to the CALIFORNIA FIG SYRUP Co. only, and we wish to impress upon all the importance of purchasing the true and original remedy. As the genuine Syrup of Figs is manufactured by the CALIFORNIA FIG SYRUP Co. only, a knowledge of that fact will assist one in avoiding the worthless imitations manufactured by other parties. The high standing of the CALIFORNIA FIG SYRUP Co. with the medical profession, and the satisfaction which the genuine Syrup of Figs has given to millions of families, makes the name of the Company a guaranty of the excellence of its remedy. It is far in advance of all other laxatives, as it acts on the kidneys, liver and bowels without irritating or weakening them, and it does not gripe nor nauseate. In order to get its beneficial effects, please remember the name of the Company—

CALIFORNIA FIG SYRUP CO.

SAN FRANCISCO, CAL.
LOUISVILLE, Ky. NEW YORK, N. Y.

United States Circuit Court, Northern District of California. Cal. Fig Syrup Co. vs. Worden & Co. et al., No. 12,378. Respondent's Exhibit No. 13. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beaizley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals, for the Ninth Circuit. Respondent's Exhibit No. 13.

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Respondents' Exhibit No. 18.

MARCH 5, 1898

SYRUP OF FIGS



ONE ENJOYS

Both the method and results when Syrup of Figs is taken; it is pleasant and refreshing to the taste, and acts gently yet promptly on the Kidneys, Liver and Bowels, cleanses the system effectually, dispels colds, headaches and fevers and cures habitual constipation. Syrup of Figs is the only remedy of its kind ever produced, pleasing to the taste and acceptable to the stomach, prompt in its action and truly beneficial in its effects, prepared only from the most healthy and agreeable substances, its many excellent qualities commend it to all and have made it the most popular remedy known.

Syrup of Figs is for sale in 50 cent bottles by all leading druggists. Any reliable druggist who may not have it on hand will procure it promptly for any one who wishes to try it. Do not accept any substitute.

CALIFORNIA FIG SYRUP CO.

SAN FRANCISCO, CAL.
LOUISVILLE, KY. NEW YORK, N.Y.

United States Circuit Court, Northern District of California. Cal. Fig Syrup Co. vs. Worden & Co. et al. No. 12,378. Respondent's Exhibit No. 18. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals, for the Ninth Circuit. Respondent's Exhibit No. 18.

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Respondents' Exhibit No. 19.

Harpers Bazar
Jan. 7th '99.

20



THE EXCELLENCE OF SYRUP OF FIGS

is due not only to the originality and simplicity of the combination, but also to the care and skill with which it is manufactured by scientific processes known to the CALIFORNIA FIG SYRUP Co. only, and we wish to impress upon all the importance of purchasing the true and original remedy. As the genuine Syrup of Figs is manufactured by the CALIFORNIA FIG SYRUP Co. only, a knowledge of that fact will assist one in avoiding the worthless imitations manufactured by other parties. The high standing of the CALIFORNIA FIG SYRUP Co. with the medical profession, and the satisfaction which the genuine Syrup of Figs has given to millions of families, makes the name of the Company a guarantee of the excellence of its remedy. It is far in advance of all other laxatives, as it acts on the kidneys, liver and bowels without irritating or weakening them, and it does not gripe nor nauseate. In order to get its beneficial effects, please remember the name of the Company—

CALIFORNIA FIG SYRUP CO.

SAN FRANCISCO, Cal.

LOUISVILLE, Ky.

NEW YORK, N.Y.

For Sale by all Druggists. Price 50 cents per bottle.

United States Circuit Court, Northern District of California. Cal. Fig Syrup Co. vs. Worden & Co. et al., No. 12,378. Respondent's Exhibit No. 19. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beazley, Deputy Clerk.

No. 564. United States Circuit Court of Appeals, for the Ninth Circuit. Respondent's Exhibit No. 19.

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Respondents' Exhibit No. 20.

**ANALYSIS.
SYRUP OF FIGS.**

{ R.....
Page.....
Book.....

R California Fig Syrup Co.

Extract of Senna, solid.....	7 per ct.
Cane Sugar... ..	50 per ct.
Alcohol	3 per ct.
Water.....	40 per ct.
	<hr/>
	100 per ct.

Flavoring.

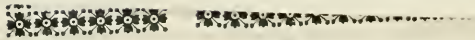
{ Oil Peppermint.....	} $\frac{1}{4}$ of 1 per ct.
{ Oil Cloves.....	
{ Oil Cassia, Cinnamon.....	
{ Oil Coriander.....	

U. S. Circuit Court, N. Dist. of Cal. Cal. Fig Syrup Co. vs. Worden et al. No. 12,378. Respondent's Exhibit No. 20. E. H. H., Examiner.

Filed April 12, 1899. Southard Hoffman, Clerk, by W. B. Beaizley, Deputy Clerk.

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No. 564. U. S. Circuit Court of Appeals, for the Ninth Circuit. Respondents' Exhibit No. 20.

Received Oct. 30, 1899. F. D. Monckton, Clerk, by Meredith Sawyer, Deputy Clerk.

Complainant's Exhibit "I."

LAXATIVE FIG SYRUP

Laxative FIG SYRUP



A PURELY VEGETABLE COMPOUND

PLEASANT TO THE TASTE & EFFICIENT IN ACTION

IT HAS NO EQUAL FOR

CONSTIPATION, BILIOUSNESS, SICK HEADACHE

ALL DISEASES ARISING FROM SICK LIVER, STOMACH, KIDNEYS & BOWELS

Especially adapted to the wants of Delicate Women and Children

LAXATIVE Fig Syrup Co. SAN ANTONIO, CAL.

New York City, N. Y.

LAXATIVE FIG SYRUP

Complainant's Exhibit "D."

SYRUP OF FIGS

SYRUP OF FIGS

A Combination of Harmless and Efficient Substances combined with the Delicious and Laxative Juices of the BEST SMYRNA FIGS.

IT HAS NO EQUAL FOR

CONSTIPATION SICK HEADACHE, BILIOUSNESS

and all diseases arising from disordered Liver, Stomach, Kidneys, and Bowels

Especially adapted to the wants of delicate women and children.

San Diego Fig Syrup COMPANY, San Francisco, Cal.

SYRUP OF FIGS

Complainant's Exhibit "U."

CALIFORNIA FIG SYRUP

CALIFORNIA FIG SYRUP

LAXATIVE COMPOUND

It Has No Equal

PLEASANT TO THE TASTE AND EFFICIENT IN ACTION.

FOR BILIOUSNESS CONSTIPATION, SICK HEADACHE AND ALL DISEASES ARISING FROM DISORDERED LIVER, STOMACH, KIDNEYS AND BOWELS.

Especially adapted to the wants of delicate women and children

PREPARED BY YETIVA DRUG CO. LOUISVILLE, KY.

CALIFORNIA FIG SYRUP

